STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company	**:**	
d/b/a Ameren Illinois	**:**	
	:	**14-0317**
Rate MAP-P Modernization Action	**:**	
Plan - Pricing Annual Update Filing.	**:**	

PROPOSED ORDER

DATED: October 31, 2014

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By the Commission:

I. INTRODUCTION

On April 17, 2014, Ameren Illinois Company d/b/a Ameren Illinois ("AIC" or "Company") filed with the Illinois Commerce Commission ("Commission") a verified petition under Section 16-108.5(d) of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., requesting approval of the third update to its Modernization Action Plan-Pricing tariff ("Rate MAP-P"). AIC's Rate MAP-P and corresponding changes to other tariffs were approved in Docket No. 12-0001 on September 19, 2012 and updated in Docket No. 12-0293 on December 5, 2012 and Docket No. 13-0301 on December 9, 2013. The pending filing sets forth AIC's updated cost inputs to Rate MAP-P based on AIC's 2013 Federal Energy Regulatory Commission ("FERC") Form 1. In addition, AIC's update filing includes data and calculations for the reconciliation of the difference between the actual costs for the 2013 rate year and the actual revenue requirement in effect for 2013.

AIC posted a notice of the filing of the proposed rate changes in its Peoria business office and published a notice twice in newspapers of general circulation within each of its rate zones, in accordance with the requirements of Section 9-201(a) of the Act, and the provisions of 83 Ill. Adm. Code 255, "Notice Requirements for Change in Rates for Cooling, Electric, Gas, Heating, Telecommunications, Sewer or Water Services."

On May 2, 2014, the Administrative Law Judges sent AIC a letter stating that no deficiencies had been identified in the requirements set forth in 83 Ill. Adm. Code 285, "Standard Information Requirements for Public Utilities and Telecommunications Carriers in Filing for an Increase in Rates" ("Part 285").

The Citizens Utility Board ("CUB") and Illinois Competitive Energy Association ("ICEA") each petitioned to intervene. Air Products and Chemicals Company, Amsted Rail Co., Inc., Archer-Daniels-Midland Company, Cargill, Inc., Caterpillar Inc., CCPS Transportation, LLC, GBC Metals, LLC d/b/a Olin Brass, Illinois Cement Company, Keystone Consolidated Industries, Inc., Olin Corporation, Phillips 66, Tate & Lyle Ingredients Americas, Inc., United States Steel Corporation-Granite City Works, University of Illinois, and Washington Mills Hennipen, Inc. also petitioned for leave to intervene as the Illinois Industrial Energy Consumers ("IIEC"). All petitions to intervene were granted. The Office of the Attorney General ("AG") entered an appearance on behalf of the People of State of Illinois. Commission Staff ("Staff") participated as well.

Pursuant to due notice, status hearings were held in this matter before duly authorized Administrative Law Judges of the Commission at its offices in Springfield, Illinois on May 13 and September 12, 2014. Thereafter, an evidentiary hearing was held September 17, 2014. Appearances were entered by counsel on behalf of AIC, Staff, the AG, CUB, and IIEC.

At the evidentiary hearings, AIC called 13 witnesses to testify. The Company's 14 witnesses are (1) Craig D. Nelson, AIC's Senior Vice President of Regulatory Affairs and Financial Services, (2) Ronald Stafford, AIC's Director of Regulatory Accounting; (3) AIC's Michael J. Getz, Controller; (4) Ronald D. Pate, AIC's Senior Vice President Operations and Technical Services; (5) Ryan Martin, Assistant Vice President and Treasurer of both AIC and Ameren Services Company ("AMS")[1], (6) David Heintz, a Vice President of the management consulting and economic advisory firm Concentric Energy Advisors, Inc., (7) Thomas B. Kennedy, III, AIC's Director of Community and Public Relations, (8) Leonard M. Jones, AIC's Director of Rates and Analysis; (9) Ryan K. Schonhoff, a Regulatory Consultant within AIC; (10) Jennifer A. Russi, AIC's Director Finance and Planning; (11) John P. Barud, AIC's Senior Director, Divisions Operations-South; (12) James C. Blessing, AIC's Senior Director, Power Supply and Infrastructure Development; (13) Jerry L. Grant, AIC's Senior Director, Corporate Marketing; and (14) James I. Warred, Certified Public Accountant and lawyer member Miller & Chevalier, Chartered.

Three witnesses testified on behalf of Staff. The Staff witnesses are (1) Mary H. Everson and (2) Scott Tolsdorf, Accountants in the Accounting Department, and (3) Alan Pregozen, Manager of the Finance Department, all of the Financial Analysis Division of the Commission's Bureau of Public Utilities.

Michael Brosch, a principal with Utilitech, Inc., a consulting firm engaged primarily in utility rate and regulation work, and David Effron, a consultant specializing in utility regulation, testified on behalf of the AG. CUB and IIEC offered Michael Gorman, a consultant in the field of public utility regulation and a Managing Principal with Brubaker & Associates, Inc., energy, economic, and regulatory consultants.

AIC, Staff, and the AG each filed an Initial Brief and Reply Brief. IIEC and CUB jointly filed an Initial Brief and Reply Brief. A Proposed Order was served on the parties.

[1] AMS is the service company subsidiary of Ameren Corporation and provides various services to its affiliates, including AIC.

II. NATURE OF AIC'S OPERATIONS

Ameren Corporation ("Ameren") formed in 1997 with the merger of Ameren Missouri Company ("AMC") f/k/a Union Electric Company d/b/a AmerenUE ("UE") and Central Illinois Public Service Company ("CIPS"). Thereafter, Ameren acquired Central Illinois Light Company ("CILCO") in 2002 and Illinois Power Company ("IP") in 2004. The service area of AIC covers roughly the lower two-thirds of Illinois. AIC currently serves approximately 1.2 million electric customers and 840,000 natural gas customers. All of AIC's operations are within Illinois, although an affiliate of AIC (AMC) provides utility service in Missouri. At one time, AMC's predecessor company served the St. Louis Metro East area in Illinois. That area was later subsumed within the service area of AmerenCIPS. Other affiliates of AIC provide unregulated services. Effective October 1, 2010, AmerenCILCO and AmerenIP merged with and into AmerenCIPS, resulting in AmerenCIPS being the sole surviving legal entity. Simultaneously, AmerenCIPS' name was changed to Ameren Illinois Company d/b/a Ameren Illinois. AIC identifies the former service areas of AmerenCIPS, AmerenCILCO, and AmerenIP as Rate Zone 1, Rate Zone 2, and Rate Zone 3, respectively.

III. OVERVIEW OF 16-108.5 RATE PROCESS

The revisions to the Act made by Public Acts 97-0616, 97-0646, and 98-0015 provide that an electric utility that commits to undertake an infrastructure investment program pursuant to Section 16-108.5(b) may elect to recover its delivery services costs through a performance based rate approved by the Commission. The performance based rate tariff (for AIC, Rate MAP-P) sets forth a formula for calculating a delivery service revenue requirement that will be used to set delivery service charges for retail electric customers. The formula includes the specific cost components that form the basis of the rates charged to the utility's delivery service customer classes. The performance based rate provides for recovery of a utility's actual, prudently incurred and reasonable costs of electric delivery services, except for those costs that the utility continues to recover through automatic adjustment clause tariffs. The performance based rate also reflects the utility's actual capital structure for the applicable year (excluding goodwill) and includes a cost of equity, the calculation of which is addressed in Section 16-108.5. The performance based rate is intended to operate in a standardized and transparent manner and be updated annually to reflect (i) historical data from the most recently filed FERC Form 1, plus projected plant additions and correspondingly updated depreciation reserve and depreciation expense for the year of filing, (ii) a reconciliation of the revenue requirement reflected in rates for each year, with what the revenue requirement would have been had the actual cost information for the year been available at the filing date, and (iii) any adjustments, including adjustments to reflect an earned rate of return on common equity outside the statutory range, required by Section 16-108.5(c). The rates established under this framework are "performance-based" because the ability to use this rate mechanism is dependent on the utility achieving certain metrics and performance goals for the periods they are in effect. AIC's most recently filed FERC Form 1 data from 2013 provides the basis for the pending formula update for Rate MAP-P. The pending updated rates under Rate MAP-

P will go into effect January 1, 2015. As a distributor of electricity and natural gas, AIC is a "combination utility" under the revisions to the Act. As such, pursuant to Section 16-108.5(b)(2) of the Act, AIC is to invest $625,000,000 over a ten-year period in electric system upgrades, modernization projects, training facilities, and other smart grid upgrades.

IV. AIC'S PROPOSED REVENUE REQUIREMENT

In Docket No. 13-0301, the Commission approved a net revenue requirement of $720,147,000. As noted above, this proceeding includes the reconciliation of revenues and costs for 2013. Excluding the 2013 reconciliation component and the collar adjustment, AIC is requesting a revenue requirement for the filing year of $854,960,000. When the 2013 reconciliation component and the collar adjustment are included, AIC's requested revenue requirement is $925,125,000. Overall, AIC's proposed update to its formula rate delivery service revenue requirement results in an increase of $204,978,000 from the electric revenue requirement ordered by the Commission in Docket No. 13-0301. AIC's calculations use a rate of return of 8.08% for the filing year and 9.25% for the reconciliation year.

V. RATE BASE

A. Uncontested Issues

1. Plant in Service

AIC’s rate base includes its gross investment in plant in service at original cost, after applying the asset separation project percentage, before projected plant additions. AIC made ratemaking adjustments to this amount to remove items recovered through other tariffs or disallowed in prior cases. No party contested the method by which this amount was calculated, or the total included in rate base. In addition, no party objected to AIC’s request that the Commission approve an original cost of electric plant in service as of December 31, 2013. The Commission concurs with the treatment of this issue.

2. Accumulated Depreciation

AIC’s rate base includes accumulated depreciation and amortization for both distribution and general and intangible plant. No party contested the method by which the accumulated depreciation was calculated, or the total included in AIC’s rate base. The Commission concurs with AIC's calculations concerning this issue.

3. Adjustments to Accumulated Deferred Income Taxes (Ameren Ex. 13.3)

Staff and the AG proposed to remove certain accumulated deferred income tax ("ADIT") assets and liabilities from rate base where the underlying item is not also in rate base. AIC accepted these proposals, and agreed to review the treatment of other

ADIT balances where the related item is not also in rate base. As a result of this review, AIC proposed to remove several additional ADIT balances from rate base. The purpose of these adjustments was to ensure consistency between the ratemaking treatment of the ADIT and the related cost items. AIC's removal of these additional cost items from rate base was not contested by any party. The Commission finds the parties' treatment of the identified ADIT issues appropriate.

4. Additional Delivery Service Jurisdictional Rate Base Items

AIC's rate base includes items in the category of "Additional [Delivery Service] Jurisdictional Rate Base Items." These items include construction work in progress ("CWIP"), property held for future use, cash working capital ("CWC"), ADIT, materials and supplies ("M&S") inventories, other deferred charges, customer deposits and advances, and other post-employment benefits ("OPEB"). Except for a limited number of contested issues discussed later, no party contested the totals for these items, or the method by which they were calculated. In light of the parties' agreements on these issues, the Commission considers their resolution reasonable.

5. Rate Base Adjustments for Projected Plant Additions

Section 16-108.5(d) of the Act requires a participating utility to include in its rate base "projected plant additions and correspondingly updated depreciation reserve and expense for the calendar year in which the inputs are filed." AIC's rate base includes its projected plant additions for 2014. The amount of projected plant additions was based on forecasted data from AIC's corporate budgeting systems. AIC made ratemaking adjustments to this amount to remove items disallowed in prior cases. The corresponding estimated depreciation reserve and expense was calculated using FERC Form 1 data. Additional adjustments to ADIT and CWC were made to reflect the impact of adjustments for projected additions. No party contested the manner in which the projected plant additions or corresponding depreciation reserve and expense were calculated, or adjustments to ADIT and CWC for projected additions, or the total amounts included in rate base. The Commission finds the treatment of these issues reasonable.

6. Additional Company Adjustments to Rate Base

AIC has reflected an adjustment to reduce its rate base by the electric delivery service portion of accrued vacation liability, net of related deferred income taxes. This adjustment is consistent with Commission orders in prior formula rate proceedings. AIC has also reflected adjustments to reduce rate base by amounts related to the National Electric Safety Code ("NESC") Rework project, the jurisdictional amount of the company's year-end 2013 OPEB expense, and incentive compensation costs based on earnings per share goals and the costs of the Performance Share Unit Program. All AIC adjustments to rate base were identified in Ameren Ex. 2.1, App 1 and App 4. No party has contested these adjustments. The Commission finds the treatment of these issues reasonable.

B. Contested Issues

1. ADIT for Metro East Assets

In 2005, AIC's predecessor company, CIPS, acquired electric utility assets in the Metro East area from UE pursuant to an asset transfer and related accounting approved by the Commission. Parties do not dispute that the accounting expressly approved by the Commission was correct. In this case, however, the AG asks the Commission to undo that approved accounting for ratemaking purposes, and reduce AIC's rate base by nearly $5 million for deferred income taxes accumulated on the assets before the transfer. AIC considers the AG's adjustment unnecessary and unlawful.

a. AIC Position

i. History of the Metro East assets

In order to aid in the understanding of this issue, AIC relates the relevant history. In 2000, UE and its affiliate CIPS jointly petitioned the Commission to approve a transfer to CIPS of the assets that UE used to provide retail electric service to the Illinois-portion of the St. Louis metropolitan (Metro East) area. (See Docket Nos. 00-0650/0655 (Cons.)) The transfer would separate all regulated utility operations in Illinois from the electric generation and marketing functions, and separate Ameren's Illinois-regulated electric operations from its Missouri-regulated electric operations. Among other benefits, this would alleviate electric generating capacity shortfalls projected for UE and assure Metro East area customers an adequate power supply.

Also considered in the consolidated dockets was UE's Asset Transfer Agreement. The Agreement described, among other obligations, the assets and liabilities that UE would transfer to CIPS. It also specified the assets and liabilities that UE would retain, including certain tax obligations:

> due or becoming due by reason of . . . (ii) the ownership, possession, use, operation, purchase, acquisition, sale or disposition, of any of the Acquired Assets, including, without limitation, . . . (ii) Taxes imposed on, or accruing as a result of the transfer of the Acquired Assets; and (iii) Taxes attributable to, or resulting from, recapture of depreciation, other tax benefit items, or otherwise arising from the transactions contemplated by this Agreement. (Docket No. 00-0655, UE Notice of Transfer, App. A, Art. II, ¶ 2.2(f))

According to AIC, retention of these tax obligations meant that when UE transferred the Metro East assets to CIPS, the ADIT resulting from depreciation of the assets that had accrued on UE's books would not follow the assets. AIC asserts that is consistent with generally accepted accounting principles ("GAAP"), which required (and continues to require) that when an asset is sold, the ADIT on the seller's books should be reversed.

UE also submitted for the Commission's review "a complete statement of the accounting entries that it [would] make on its books to record the transfer of the assets and a certificate from an independent certified public accountant stating that the entries are in accordance with [GAAP]." (Docket Nos. 00-0650/0655 (Cons.), Order at 4, 8) After a litigated proceeding, and over a Staff and intervenor objection that the transfer may increase Metro East area base rates, the Commission approved the transfer as it was described in the Asset Transfer Agreement. AIC notes that the AG did not participate in the proceeding.

Three years later, UE and CIPS sought Commission approval to transfer UE's Metro East retail gas assets to CIPS. (See Docket No. 03-0657) Again, the Commission approved the transfer as it was described in the utilities' Asset Transfer Agreement. The Commission specifically found that the transfer was "in the public interest" and that "neither the ratepayers of AmerenUE nor of AmerenCIPS are likely to be adversely affected in the event the proposed asset transfer and reorganization takes place." (September 22, 2004 Order at 17) The Commission also approved the accounting treatment for transfer, with a single correction proposed by Staff to the entries to remedy an inadvertent omission of the calculation of the deferred tax gain that would be recorded on UE's books as a result of the transfer. The Order explains:

> Staff witness Hathhorn . . . discovered a difference, other than the book value amounts, between the journal entries in Mr. Nelson's Schedule 2 and those offered by the Companies in the electric proceeding, Docket Nos. 00-0650 and 00-0655 (Consolidated). Specifically, she says that the deferred tax gain calculation was inadvertently omitted from the calculation of the 2000 journal entries. Ms. Hathhorn found no reason to object to this correction from the previous proceeding, and she recommended that the Commission accept the proposed journal entries. (Id. at 20)

The Commission otherwise found "the Companies' proposed journal entries to be reasonable, and those journal entries are approved." (Id.) Again, the AG did not participate in the proceeding.

In 2005, UE and CIPS carried out the Metro East transfer. Consistent with the transfers and accounting approved by the Commission, the ADIT that had accrued on UE's books related to the assets did not follow the assets. Likewise, consistent with the Commission-approved accounting, CIPS "stepped-up" the assets' tax basis from the adjusted-for-depreciation basis on UE's books to the purchase price on its own books. To specifically account for this "step-up" in the assets' tax basis, CIPS recorded and amortized a Metro East deferred tax asset on its books. There is no dispute that this treatment was also consistent with GAAP and federal tax regulations; AIC relates that those rules provide that a purchaser's tax basis in an asset is the purchase price, regardless of whether the seller and purchaser are affiliated entities. Thus, AIC concludes that the rules required CIPS to record the "stepped-up" basis.

But, AIC continues, the “step-up” in basis was temporary. This is because with it, the accrual of ADIT on the assets restarted, as if CIPS had purchased and put the assets in-service on the day of the transfer. This meant that, in time, the net book value of the Metro East assets on CIPS’s books—their “stepped-up” basis net of accrued ADIT—would be equal to or less than the depreciated value of the assets on UE’s books. Because ADIT reduces a utility’s rate base for ratemaking purposes, this ADIT “reset” meant that Metro East area customers would receive the benefits of the assets’ depreciation on CIPS’s books, as they did on UE’s books, again—and to a greater extent.

Over the course of the next ten years, through a series of rate cases, CIPS, and later AIC, accounted for the ADIT associated with the Metro East assets in the manner approved by the Commission, without any objection from any party. (See generally, Docket Nos. 09-0306, et al. (Cons.), Docket Nos. 07-0585, et al. (Cons.), and Docket Nos. 06-0070, et al. (Cons.) In 2012, in AIC’s initial performance-based electric formula rate case, Docket No. 12-0001, the AG recommended an adjustment to AIC’s rate base that effectively would have required AIC to recognize on its books the ADIT for the Metro East assets that had accrued on UE’s books. In other words, the AG proposed to undo, for ratemaking purposes, the approved accounting for the transfer. The Commission rejected the adjustment: “The Commission finds that AIC has properly accounted for these items, and, as recommended by Staff, no adjustment is necessary in this proceeding.” (September 19, 2012 Order at 69) The AG again proposed the adjustment in AIC’s first performance-based electric formula rate update case, Docket No. 12-0293. The Commission rejected the AG's position again finding that “AIC has properly accounted for [the acquisition of assets by CIPS from UE], and there is no need for any additional adjustment.” (December 5, 2012 Order at 34)

In AIC’s 2013 update case, however, the Commission changed course and approved the opposite result. Although AIC continued to account for the assets consistent with the Commission-approved accounting, the Commission approved rates that amounted in AIC's opinion to a reversal of that accounting. It found that “it does not appear from the evidence presented that ratepayers will receive the appropriate tax benefits from the Metro East assets based on AIC’s accounting for this issue.” (Docket No. 13-0301, December 9, 2013 Order at 32) AIC's appeal of that part of the Commission’s Order in Docket No. 13-0301 is pending. (See <u>Ameren Ill. Co. v. Ill. Comm. Comm’n</u>, App. 4th Dist. Case No. 04-14-0128) The Commission further directed:

> If a party wants to propose a similar adjustment in future proceedings, the information should be requested by that party and AIC shall provide the requested information to demonstrate with actual amounts or calculated amounts from the books and records of the involved entities that AIC ratepayers were not and will not be harmed by the regulatory treatment of the internal transfer of assets from one AIC operating utility to another AIC operating utility. (Order at 32)

ii. The AG's Metro East Adjustment is Unnecessary

In this case, the AG again proposes a nearly $5 million adjustment to remove the Metro East deferred tax asset from AIC's rate base. The AG's adjustment effectively would have the ADIT for the Metro East assets that accrued on UE's books follow the assets even though the Commission-approved transfer and accounting would not. Setting aside the fact the Commission approved the accounting, AIC maintains that the adjustment is unnecessary because ratepayers are not harmed by inclusion of the Metro East deferred tax asset in AIC's rate base. To the contrary, AIC believes that customers are benefitting from it.

Where ADIT, related to utility plant, is considered no-cost capital, it reduces rate base. Therefore, the formula for AIC's performance-based electric rate incorporates a deduction to reduce AIC's rate base by the amount of related ADIT, including the ADIT associated with the Metro East assets. Consistent with the Commission-approved accounting for the transfer, when CIPS acquired the Metro East assets in 2005, the ADIT that had accrued on the assets prior to the transfer did not follow the assets but reset on CIPS's books as of the transfer date. AIC states that the result was more ADIT—an asset that had been fully or partially depreciated on UE's books and that thus had accrued ADIT that reduced UE's rate base, began depreciating again on CIPS's books, and thus accrued ADIT that reduced rate base a second time. In other words, because of the transfer, AIC contends that ratepayers received, and are receiving, the benefit of an additional rate base reduction. AIC states further that they received, and are receiving, tax benefits greater than the value of the Metro East deferred tax asset.

According to AIC, Ameren Ex. 2.6 shows the amounts that support this conclusion. The total Metro East ADIT that had accrued on AIC's books since the 2005 transfer through year-end 2013 was $18.094 million. The balance of the Metro East deferred tax asset remaining in rate base as of year-end 2013, however, was only $6.416 million. The resulting net amount is $11.678 million, or $8.913 million after application of the electric jurisdictional allocation factor. AIC has reduced its rate base in this case by that amount. In summary, when netted against the attendant ADIT deduction, AIC states that the result is a net ratepayer benefit of $8.913 million, or an $8.913 million reduction to rate base (($18.094M) + $6.416M = ($11.678M x 76.32% = $8.913M)).

AIC argues the beneficial ratepayer impact of the transfer another way. Taking a representative sample of the thousands of Metro East assets that were transferred, AIC compared (1) the book and tax depreciation amounts, and deferred taxes that resulted from the Metro East transfer; and (2) the book and tax depreciation amounts, and resulting deferred taxes, had the transfer never occurred. AIC relates that its analyses show that, although the net book basis (original cost net of depreciation) under both scenarios is similar, ratepayers have benefitted from additional ADIT—reducing rate base by an extra $248,917 for the assets studied—as a result of the transfer. (See Ameren Ex. 19.0 at 12)

AG witness Effron complains that AIC's analyses are not relevant because he believes "the question of what would have happened in the absence of the transfer is not the same as the question of what would have happened in the absence of the step-up of the tax basis." (AG Ex. 4.0 at 2) He appears to suggest that the comparison should consider two scenarios, one with the transfer and step-up recorded, and one with the transfer and no step-up recorded. AIC counters that accounting and tax rules, as well as the Commission-approved accounting treatment for the transfer, required CIPS to "step-up" the tax depreciation basis to the purchase price of the assets. AIC therefore concludes that the only meaningful comparison that can be done, putting aside the other benefits of the Metro East transfer, is the one that AIC has done, and that comparison proves a demonstrable ratepayer benefit resulting from the transfer.

Even if it were possible to transfer the assets without a step-up in tax basis, AIC contends that the correct adjustment, at most, would be the difference between the ADIT balance produced in that scenario and the ADIT accrued since the time of the transfer, assuming the first value was greater than the second. The AG, however, does not quantify that difference. Although the AG should, AIC points out that the AG does not tie Mr. Effron's nearly $5 million rate base adjustment to any alleged ratepayer harm or attempt to quantify that alleged harm. AIC avers that there is no harm and concludes that the AG's adjustment is unnecessary.

iii. Benefits of the Metro East Transfer

In considering the AG's challenge to an isolated accounting entry, AIC asserts that the Commission should not lose sight of what led to that entry: the operational and economic benefits that flowed from the Metro East transfer. When the Commission approved the Metro East asset transfer, AIC states that the Commission found the transfer in the public interest and acknowledged its many benefits:

- It would assure Metro East customers an adequate power supply and insulate bundled customers from volatile market prices through 2004 and all customers from any meaningful risk of rate increase through 2004;
- It would allow Ameren to organize its subsidiaries along state lines and thereby realize cost savings by consolidating regulatory reporting requirements and administration, reducing operating expenses, and enhancing regulatory efficiencies;
- It would provide for a single point of contact in CIPS for Ameren regulatory matters in Illinois;
- It would subject Ameren to a consistent set of rules in Illinois governing energy supply activities, and provide a clean split between Ameren's Illinois activities and those in Missouri, where the electric industry had not yet been deregulated;
- It would terminate UE customers' obligation to pay decommissioning charges related to the Callaway nuclear plant; and
- It was consistent with the Illinois deregulation model, which the Commission acknowledged allows utilities to restructure their operations

> by transferring the costs and benefits associated with generation to another entity, and does not require utilities to obtain or retain generation in order to provide service at below market prices. (Docket Nos. 00-0650/0655 (Cons.), December 20, 2000 Order at 5-6, 11-12, 14-15; Docket No. 03-0657, September 22, 2004 Order at 5-6; (Ameren Ex. 19.0 at 14))

AIC observes that the AG does not dispute any of these benefits. Instead, the AG simply dismisses them, claiming that they "are not relevant to the specific question of whether the Step-Up Basis debit entry in Account 190 should be included in rate base at this time." (AG Initial Brief at 13) But AIC maintains that these benefits are relevant. But for the benefits of the transfer, AIC does not believe that the Commission would have approved it; and but for the Commission's approval of the necessary accounting, AIC would not have accounted for the Metro East ADIT as it did.

When confronted with the AG's proposal in this docket, AIC believes that it sufficiently demonstrated that the Commission-approved accounting benefits ratepayers. Consistent with the Commission's Docket No. 13-0301 directive, AIC alleges that it demonstrated how the challenged ADIT treatment tangibly benefits ratepayers. (See Docket No. 13-0301, December 9, 2013 Order at 32; AIC Initial Brief at 12-13; Ameren Ex. 2.6) AIC states that it showed that, although the Metro East deferred tax asset in AIC's rate base is positive, the Metro East ADIT accrued since the 2005 transfer is even greater still—it now exceeds the vintage balance by over $11 million. That amount serves to reduce AIC's rate base, and thus provides a demonstrable, tangible ratepayer benefit.

AIC considers it noteworthy that although Staff supported a Metro East ADIT adjustment in Docket No. 13-0301, Staff takes no issue in this case with AIC's treatment of the Metro East ADIT or AIC's ratepayer benefit demonstration. Yet the AG complains that demonstration is unavailing. AIC understands that the AG wants AIC to show what the Metro East ADIT would have been had the transfer still occurred, but (contrary to the Commission-approved accounting and accounting and tax rules) AIC had not stepped-up the Metro East assets' tax basis to their purchase price on its books. The AG accuses AIC's witness, Mr. Stafford, of "refus[ing]" to provide this analysis. (Id. at 10) Mr. Stafford explains that the analysis the AG demands is impossible to produce. AIC argues that accounting and tax rules required CIPS to "step-up" the Metro East asset tax basis on its books at the time of the transfer, and that is the treatment the Commission approved. (See Ameren Ex. 19.0 at 10)

iv. The AG's Metro East Adjustment is an Unlawful Collateral Attack

AIC also argues that the AG's adjustment represents a collateral attack on prior Commission orders. "A collateral attack 'is an attempt to impeach [a] judgment in an action other than that in which it was rendered.'" (<u>Buford v. Chief, Park Dist. Police</u>, 18 Ill. 2d 265, 271 (1960)) Orders of the Commission that are within its jurisdiction are not subject to collateral attack. (Peoples Gas Light & Coke Co. v. Buckles, 24 Ill. 2d 520, 528 (1962)) AIC observes that the proper means by which to correct perceived errors in Commission orders is through the rehearing and appeal processes in Sections 10-113 and 10-201 of the Act. Such corrections should not be sought in other dockets.

The AG does not argue that CIPS should not have acquired the Metro East assets. Nor does the AG deny benefits associated with the Metro East transfer. AIC notes further that the AG does not expressly contend that the Commission-approved accounting for the transfer, including the requirement that UE's ADIT not follow the Metro East assets, was wrong. Nevertheless, AIC believes that that is the substance of the AG's position; the AG questions the propriety of the accounting sanctioned by the Orders approving the Metro East transfer. AIC maintains that the testimony of Mr. Effron makes this plain. He complains, "[u]tility holding companies should not be allowed to increase the net rate base value of assets by transferring the assets between affiliates." (AG Ex. 2.0 at 5) And he "disagree[s] with the premise that it was appropriate to reset the ADIT balance to zero for ratemaking purposes." (AG Ex. 4.0 at 4) In AIC's view, the AG's position, besides ignoring accounting and tax rules, would undermine the Commission-approved accounting for the transfer and penalize AIC for its compliance with that approved accounting. Although subtle in form, the AG's adjustment is an unlawful collateral attack on the Commission's asset transfer Orders.

AIC asserts further that asking that ADIT follow the assets "for ratemaking purposes" does not cure the unlawfulness of the AG's adjustment. Instead, it suggests that the Commission was either unaware of, or turned a blind eye to, the potential ratemaking impacts of the transfer. But according to AIC this is not the case; the Commission considered the impact of the transfer on rates and concluded that "the record firmly establishes that there is no strong likelihood that after the Transfer[,] Metro East ratepayers will be subjected to a rate increase request and the transfer cannot be prohibited on this ground." (Docket Nos. 00-0650/0655 (Cons.), Order at 12) The Commission also found, AIC continues, that the transfer was "in the public interest" and "neither the ratepayers of AmerenUE nor of AmerenCIPS are likely to be adversely affected in the event the proposed asset transfer and reorganization takes place." (Docket No. 03-0657, Order at 17) If the AG disagreed with the accounting approved by the Commission for the Metro East transfer, or wanted different accounting to apply for ratemaking purposes, AIC asserts that the AG should have intervened in the Metro East transfer proceedings and advocated its position there. AIC states that the AG can not collaterally attack those orders here.

v. The AG's Metro East Adjustment Unlawfully Double-Counts ADIT

AIC claims that the AG's adjustment must also be rejected because it unreasonably double-counts ADIT on the Metro East assets. AIC points out that the Commission and Illinois courts have repeatedly recognized that double-counting elements in establishing utility rates is unreasonable. Double-counting is not only unlawful in ratemaking, but also improper from an accounting perspective; it misstates the financial and accounting impact of the underlying transaction or accounting entry that gave rise to the double-counting error.

AIC argues that the AG's adjustment to remove the Metro East deferred tax asset, and effectively have the ADIT that accrued on UE's books follow the assets, would count the deferred tax benefits associated with this single group of assets twice. AIC has already reduced rate base by the ADIT that has accrued on its books since 2005 related to the Metro East assets. AIC explains that the AG's adjustment, however, would count a portion of that ADIT again by imputing to AIC the ADIT accrued on UE's books for the same assets. In other words, because the accrual of ADIT reset at the time of the transfer, some of the ADIT the AG would impute to AIC's rate base would be counted twice—once pre-transfer, and once post-transfer.

vi. Prudent and Reasonable Costs Must be Allowed

The Commission's authority to reduce rates in each annual formula rate update proceeding is limited to determining the "prudence and reasonableness of the costs incurred" in the year under review. (Section 16-108.5(d)(1)) AIC states that the AG does not challenge the prudence or reasonableness of any aspect of the Commission-approved Metro East transfer. The sole basis, according to AIC, for the AG's adjustment is Mr. Effron's complaint that "this transfer of property from one regulated utility to another should not have resulted in any increase to the net value of those assets included in the Company's rate base." (AG Ex. 4.0 at 4) AIC reiterates that this view ignores the circumstances of the transfer and the Commission's Orders approving it. Furthermore, AIC relates that the AG's assertion does not even allege, much less support a finding, that any costs were unreasonable or imprudent.

b. AG Position

The AG proposes a rate base adjustment to account for an ADIT item of approximately $4.897 million related to AIC's Metro East plant. The AG acknowledges that this adjustment reverses for regulatory purposes the ADIT debit entry (the "step-up basis" entry) that CIPS applied when it acquired the Metro East assets from UE in 2005. Because an ADIT debit reduces the net ADIT balance, the AG argues that it is necessary to remove the debit amount so that the ADIT balance properly reflects the ADIT benefit associated with UE's Illinois plant. The AG explains that this adjustment is the remaining amount (as of year-end 2013) of the step-up basis entry, which has fallen through amortization since 2005. The step-up basis ADIT debit entry was recorded in 2005 to Account 190 of AIC's then-subsidiary CIPS as an equal offset to Metro East-related ADIT in Account 282 of CIPS. The offset to Metro East-related ADIT allowed CIPS to immediately increase its rate base, which in the AG's opinion deprived Illinois ratepayers of the ADIT benefit that had accumulated on the plant during UE's ownership. The AG contends that its adjustment would restore a portion of that benefit to Illinois ratepayers.

CIPS acquired the Metro East plant from UE at its net book value, which for CIPS was the same as it was under UE's ownership, approximately $126.9 million. Upon acquisition, CIPS stepped up the cost basis of the assets for tax purposes to reflect the net book value. CIPS also reset tax depreciation on the assets to year "zero." The effect of the offsetting step-up basis deferred income tax entry to Account 190 was to increase CIPS' electric distribution service rate base by approximately $14.3 million. The net rate base value, defined as plant in service minus accumulated depreciation minus ADIT, thus clearly increased as a result of the transfer. As AG witness Effron stated in his direct testimony, the "transfer of property from one regulated utility to another should not result in any increase to the net value of those assets included in the Company's rate base." (AG Ex. 2.0 at 5) While the step-up basis entry has been gradually decreasing over time through amortization, as shown in the attachment to AIC's response to data request AG 8.10R (AG Cross Ex. 4 at 15-16), it is still positive.

The AG and CUB proposed in Docket No. 13-0301 the identical adjustment (using figures valid as of December 31, 2012) as the AG proposes here, and the Commission approved the proposal, concluding:

> Having reviewed the record in this proceeding, the Commission is persuaded that the evidence provided, including new expert testimony on rate base impacts, is sufficient to support a result opposite of that previously reached by the Commission. The Commission finds that it does not appear from the evidence presented that ratepayers will receive the appropriate tax benefits from the Metro East assets based on AIC's accounting for this issue. Thus, the Commission adopts the $5.624 million downward adjustment to rate base proposed by Staff, the AG, and CUB.
>
> If a party wants to propose a similar adjustment in future proceedings, the information should be requested by that party and AIC shall provide the requested information to demonstrate with actual amounts or calculated amounts from the books and records of the involved entities that AIC ratepayers were not and will not be harmed by the regulatory treatment of the internal transfer of assets from one AIC operating utility to another AIC operating utility. (December 9, 2013 Order at 32)

The AG is not persuaded by AIC witness Stafford's analyses purporting to show that AIC ratepayers were not and will not be harmed by AIC's proposed rate base treatment in this proceeding of the transferred Metro East assets. First, Mr. Stafford presented AIC Ex. 2.5 showing the total ADIT that has accrued on the electric Metro East assets. After netting this amount against the step-up basis deferred tax asset and applying the jurisdictional allocation factor, Mr. Stafford concluded that approximately $8.9 million of ADIT has accumulated since the transfer for the benefit of electric distribution customers. While it is true that a positive amount of ADIT (exceeding the amount of the step-up basis debit entry to Account 190) has accumulated on the transferred assets since 2005, the AG contends that AIC has not established that the balance of ADIT that exists today in relation to the transferred assets (net of the step-up basis ADIT debit amount) exceeds the balance of ADIT that would have accumulated post-transfer in the absence of the step-up in tax basis of the transferred assets, as Mr. Effron noted in rebuttal testimony.

According to the AG, Mr. Stafford expressly refused to prepare an analysis that would compare ADIT in reality after the transfer against the ADIT that would have existed on the books of CIPS without the step-up in tax basis. Mr. Stafford argued that because federal tax rules require the step-up in tax basis upon the transfer, it is "impossible" and "irrelevant" to conduct such a comparison. But the AG counters that the accounting treatment required by federal tax rules need not be the same as the Commission's regulatory treatment of the transfer, and the Commission's Docket No. 13-0301 Order expressly asked for an analysis of whether AIC ratepayers were harmed by the Commission's regulatory treatment. Mr. Stafford argues that "the only meaningful comparison of the ratepayer impact is between what actually happened – the transfer with step-up – and what would have happened had the transfer not occurred" (Ameren Ex. 19.0 at 10) even though this is not the comparison the Commission requested in last year's Order. Instead of the comparison the Commission actually requested, the AG asserts that Mr. Stafford prepared several analyses purporting to show net ratepayer benefit from the regulatory accounting of the transfer (See Ameren Ex. 13.5, shown at AG Cross Ex. 6; Ameren Ex. 13.5R; and Ameren Ex. 19.3, which expanded the number of sampled assets shown in Ameren Exs. 13.5 and 13.5R from 3 to 14), all based on several questionable assumptions and all ultimately irrelevant. The AG discusses AIC's assumptions at pages 6 and 7 of its Reply Brief. As Mr. Effron observed in his rebuttal testimony, Mr. Stafford's analysis at Ameren Ex. 13.5 (Rev.) did not "establish that the post-transfer balance of ADIT net of the remaining Metro Deferred Tax Asset to be included in rate base at the present time was at least as great as the balance of ADIT that would exist at the present time if the step-up to the tax basis had not been recorded. Rather, Mr. Stafford's analysis purports to show that 'For the three assets combined, the deferred tax balance is greater with the transfer than had the transfer never happened.' " (AG Ex. 4.0 at 2)

Moreover, assuming Mr. Stafford's exhibits are somehow relevant, as Mr. Effron stated in his rebuttal testimony, Mr. Stafford's analysis at Ameren Ex. 13.5 (Rev.) showed that "the rate base value of the transferred assets, that is the Net Book Basis minus the ADIT, is actually higher in the 'Actual with Step-up' case. Therefore, according to Mr. Stafford's calculations, ratepayers are presently paying a return on a higher rate base as a result of the transfer." (AG Ex. 4.0 at 2-3) The AG states that this can be seen in the following calculations based on Ameren Ex. 13.5 (Rev.), page 1:

	1994 Asset	1999 Asset	2004 Asset
Net Rate Base Value in Actual with Step-Up scenario (Line 1 + Line 7)[2]	-$22,305	$75,700	$237,828
Net Rate Base Value in Hypothetical Without Transfer scenario (Line 8 + Line 11)	-$57,191	$44,021	$205,661

The AG explains that for each of the three assets in Ameren Ex. 13.5 (Rev.), the net rate base value is lower in the Hypothetical Without Transfer scenario, indicating that ratepayers are paying for a higher rate base in the Actual With Step-Up scenario.

The AG also observes that Mr. Stafford testified that "[t]he only thing that the transfer changed was the timing of those [deferred tax] benefits." (Ameren Ex. 13.0 (Rev.) at 10) Asked in discovery whether it is preferable for a person to receive a monetary benefit of known nominal amount sooner or later, the AG points out that Mr. Stafford hedged and cited numerous confounding variables that might influence the answer. (See AG Cross Ex. 4 at 17) While Mr. Stafford was disinclined to directly answer the question, the AG states that the Commission can draw its own conclusions about whether a given deferred tax benefit would be more favorably received by customers sooner rather than later.

The AG further understands Mr. Stafford to believe that other benefits of the asset transfer, including operational and administrative economies of scale stemming from the asset transfer to CIPS and operational and financial benefits of the AIC merger, benefitted customers. But according to the AG, Mr. Stafford made no attempt to quantify such benefits. In any event, the AG maintains that those benefits are not relevant to the specific question of whether the step-up basis debit entry in Account 190 should be included in rate base at this time.

The AG denies that its proposed adjustment represents a collateral attack on prior Commission orders. The AG asserts that the orders referred to (e.g. Docket Nos. 00-0650/0655 (Cons.) and Docket No. 03-0657) were accounting or asset transfer orders, not ratemaking orders, and did not direct the Commission's treatment of the transferred assets for ratemaking purposes. The Commission was obviously aware of those prior accounting orders when it rendered its decision in Docket No. 13-0301. Moreover, the AG continues, that the Commission generally found a decade ago that the transfer of the Metro East assets was in the public interest and would not adversely affect ratepayers does not mean the specific ratemaking treatment of the ADIT related to the Metro East assets was correct.

[2] Due to the conventions around negative and positive numbers in Mr. Stafford's exhibit (*see* Tr. at 125), it is appropriate to *add* the net book value figure shown to the deferred tax figure shown in order to *subtract* the ADIT from the net book value.

In response to AIC's claim that the AG's proposed adjustment "would unreasonably double-count ADIT on the Metro East assets," the AG contends that AIC has not established a claim of double-counting using any available data in the record. According to the AG, AIC's argument of "double counting" begs the question by assuming that the amount of Metro East electric delivery-related ADIT currently on AIC's books is the just and reasonable amount and that additional deduction of ADIT from rate base would be a duplicate deduction. "Double-counting" might be a salient concern, the AG continues, if the amount of ADIT accumulated on the Metro East assets since the transfer (using the stepped-up tax basis) plus the amortized value of the Step Up Basis deferred tax asset were higher than the just and reasonable amount of ADIT for this year's formula rate update proceeding, but AIC has not shown that. Moreover, the AG argues that AIC's claim of double-counting is based entirely on the premise that the balance of ADIT related to the transferred assets was properly reset to zero at the time of the transfer. The transfer of the assets from UE to CIPS at book value did not result in any payment of taxes at the time of the transfer, and in the AG's view this transfer of property from one regulated utility to another should not have resulted in any increase to the net value of those assets included in AIC's rate base. For ratemaking purposes, the AG maintains that the ADIT associated with the assets at the time of the transfer should have followed the assets, and should not have been reset to zero. Thus, the AG concludes that there is no double counting.

In summation, the AG relates that in Docket No. 13-0301, the Commission found that "there is no dispute among the parties that the net Metro East-related rate base on the books of CIPS immediately after the transfer was higher than the net Metro East-related rate base on the books of UE immediately before the transfer." (December 9, 2013 Order at 32) The AG avers that there is still no dispute on this critical point. The excess rate base value on the books of CIPS diminishes over time as the ADIT on the stepped-up tax basis accumulates. The AG maintains, however, that AIC has not established that the accumulation of ADIT on the stepped up basis has yet reached the point where the deferred tax debit balance on the Metro East assets is completely offset. Therefore, the AG recommends that the Commission eliminate from AIC's rate base this ADIT debit balance.

c. Commission Conclusion

When the Commission changed course and adopted an adjustment in Docket No. 13-0301 nearly identical to the AG's proposal in this case, it advised parties that any future similar proposals must demonstrate whether AIC ratepayers were or will be harmed by the regulatory treatment of the Metro East assets from UE to CIPS (now AIC). The AG and AIC have both attempted to make that showing. While the AG insists that AIC has failed to demonstrate overall customer benefits, AIC is adamant that it has succeeded.

Having considered the evidence, the Commission is satisfied that the transfer of assets with the step up in cost basis benefitted customers overall, which is consistent with AIC's position. The expanded analysis Mr. Stafford discusses in his surrebuttal testimony, along with Ameren Ex. 19.3, demonstrate to the Commission's satisfaction that for regulatory treatment purposes, AIC's position is the most appropriate. While this outcome represents a break from the decision in Docket No. 13-0301, this result is based on the record in this docket and is consistent with Commission orders prior to Docket No. 13-0301 addressing this issue. Accordingly, the AG's proposal is not adopted. To the extent that this or other similar issues are raised in the future, the type of expanded analysis that Mr. Stafford offered would be more helpful if offered earlier in the proceeding.

2. CWC - Current Income Taxes

CWC is the amount of funds required to finance the day to-day operations of a company. CWC determinations are generally intertwined with lead-lag studies that are used to analyze the lag time between the date customers receive service and the date that customers' payments are available to a company. This lag is offset by a lead time during which a company receives goods and services, but pays for them at a later date. The "lead" and "lag" are both measured in days. The dollar-weighted lead and lag days are then divided by either 365 or 366 to determine a daily CWC. This CWC factor is then multiplied by the annual test year cash expenses to determine the amount of CWC required for operations. The resulting amount of CWC is then included as part of a company's rate base.

AIC has accepted Staff's proposal to list current state and federal taxes separately in its CWC calculation. The AG argues that when the "Current Income Taxes" value in AIC's calculation of CWC is negative, the negative value should be replaced with a zero. The AG contends that inclusion of the negative value contravenes the Commission's orders in prior cases, specifically Docket Nos. 13-0301 and 13-0501/13-0517 (Cons.). AIC, however, believes that its CWC calculations precisely reflect the Commission's determinations in those cases, and need not be altered.

a. AIC Position

AIC provides background on the issues surrounding the CWC calculation for income taxes. It explains in Docket No. 13-0301, the AG proposed modifying AIC's Appendix 3, line 8 with the caption "(Less) Deferred Income Taxes" to eliminate the income tax entry on line 27. At the time, line 8 of AIC's Appendix 3 was titled "Other Revenue Items If Any," and line 27 was titled "Income Taxes (Including Investment Tax Credit Adjustment)." The AG made an identical proposal in Docket Nos. 13-0501/13-0517 (Cons.). In both cases, the AG pointed to the fact that Commonwealth Edison Company's ("ComEd") lead lag study filed in Docket No. 13-0318 properly includes negative "Current Federal Income Tax." Thus, the AG's position in those cases was that a line item subtracting deferred taxes should be inserted in the calculation of CWC. AIC relates that in both cases the Commission determined that it would adopt the AG's proposed adjustment on this issue. (See Docket No. 13-0301, Order at 16 and Docket Nos. 13-0501/13-0517 (Cons.), Order at 40) AIC states that the Commission took note of ComEd's calculation of CWC, and found that AIC should conform its CWC calculation to ComEd's.

As a result, AIC added a line item to its Appendix 3: the new line 7a is titled "(Less) Deferred Income Taxes (Including Investment Tax Credit Adjustment)." AIC also changed line 27 to reflect "Current Income Taxes," rather than the total "Income Taxes" it had previously used. Together, these changes subtract deferred income taxes from the overall CWC calculation, while including current income taxes. Like ComEd in Docket No. 13-0318, AIC's "Current Income Tax" is negative, and that negative value is reflected in AIC's CWC calculation. Thus, AIC believes that it fully complied with the Commission's order adopting the AG proposal when AIC inserted a line with the caption "(Less) Deferred Income Taxes" to eliminate the income tax entry on line 27, and included negative "Current Federal Income Tax" in the calculation.

AIC disagrees with the AG's claims that the AG's current proposal was approved by the Commission in Docket No. 13-0301. According to AIC, the Commission has not ordered AIC to implement the AG's current proposal in any prior proceeding. As AIC understands it, the AG proposes that the amount used on Appendix 3, line 7a should be revised to completely eliminate Current Income Tax on line 27. In other words, the AG would like Appendix 3, line 27 (which is now titled "Current Income Tax") to reflect a value of zero, rather than the negative value it currently reflects. AIC also understands the AG to argue that no negative amounts be reflected as income tax expense until in future years AIC begins actually disbursing cash to pay such income taxes. Thus, the AG proposes that Appendix 3, line 27 reflect a value of zero only if the actual value that belongs in that column is negative. If the value is positive, the AG believes the positive value should be reflected. AIC contends that this proposal to adjust the numerical values within the CWC calculation under certain circumstances (but not others) is clearly not the same as the AG's earlier proposal to insert a new line item into the calculation.

AIC believes that its current CWC calculation precisely reflects the Commission's most recent orders concerning this issue. Therefore, AIC contends that it is unnecessary to make the additional alterations the AG requests. In addition, AIC argues that implementation of the AG's proposal would cause inconsistency and potential confusion in the calculation of CWC. As AIC witness Stafford explains, all of the inputs into AIC's CWC calculation are taken from AIC's FERC Form 1, which is based on accrual accounting. But the AG's current proposal would require that cash-based accounting principles be applied to a single element of the CWC calculation. This would mean that one element of the CWC calculation would be handled inconsistently from the rest. Moreover, AIC asserts that the AG's proposal would require that a single item in AIC's CWC calculation be replaced with a zero—but only when the actual value that should be reflected for that item is negative. Because the AG has not described how this change would be implemented in AIC's formula rate schedules and appendices, AIC fears that there is potential for confusion.

In its Reply Brief, AIC contrasts the AG's proposal from the proposals it advanced in Docket Nos. 13-0301 and 13-0417. It states that in the 2013 cases the AG proposed to rename line items in the CWC calculation, whereas in this proceeding, the AG proposes to adjust the numerical values displayed on those lines. It compares the AG's proposal in 2013 to remove deferred tax amounts from the CWC calculation, to the current AG proposal to remove negative current tax amounts. The Company emphasizes that deferred taxes are not the same as negative current tax amounts.

AIC asserts that the AG’s position about the proper way to account for negative current income tax amounts in the CWC calculation in this case is the opposite of its position in prior AIC cases, and appears to contradict the testimony of the AG’s witness on this issue. The Company notes the AG's argument that in Docket No. 13-0318 “ComEd properly reflects its actual tax payment,” and that “ComEd’s treatment of income tax expense for CWC purposes is consonant with proper accounting and ratemaking," citing Docket No. 13-0301, Order at 14. It contrasts the Docket No. 13-0301 argument with the AG's statement that it now believes that the Commission's approved CWC calculation in Docket No. 13-0318 was incorrect. The Company finds that the AG argument that incorrect treatment was approved in Docket No. 13-0318 contradicts AG witness Brosch's testimony. It recounts that Mr. Brosch alleged that AIC had not complied with this portion of the Order, but he never challenged the propriety of the Commission’s conclusion that AIC should conform its CWC calculation to ComEd’s, or the propriety of ComEd’s CWC calculation.

In response to the AG argument that where AIC is not paying income taxes in cash, there should be no CWC requirement associated with income tax. AIC asserts that its method does not create a CWC requirement associated with income tax. It asserts that including negative current income taxes in CWC, as AIC has done, reduces the total amount of CWC. It contrasts the AG's proposal which will increase the total CWC requirement by approximately $69,000.

The Company asserts that the AG proposal conflicts with the Section 16-108.5 requirement that inputs to the formula rate be based on the utility’s FERC Form 1. It says Section 16-108.5(d)(1) requires that the “inputs to the performance-based formula rate for the applicable rate year shall be based on final historical data reflected in the utility’s most recently filed annual FERC Form 1." It states the inputs to AIC’s CWC calculation are based on the data contained in its FERC Form 1, which uses accrual accounting. The Company states, under accrual accounting, expenses are recorded when they are incurred rather than when payment is made. AIC asserts that the AG’s proposal would require AIC to use cash-basis accounting for the amount of Current Income Taxes in AIC’s CWC calculation. Thus, it argues that the AG’s proposal would include an input to the performance-based formula rate that is not "based on final historical data reflected in the utility’s most recently filed annual FERC Form 1.” The Company also asserts that inconsistencies within the calculation of CWC in the AG’s proposal would require that cash-basis accounting principles be applied to only one item in AIC’s CWC calculation, while accrual accounting principles would apply to all other items.

AIC concludes that Staff and it agree that its CWC should include current income taxes, regardless of whether the current income taxes are positive or negative. AIC also agrees with Staff's recommendation that the Commission "specifically state in its conclusion which elements it considers appropriate" for inclusion in the CWC calculation.

b. AG Position

The AG notes that in Docket Nos. 13-0501/13-0517 (Cons.), the Commission concluded in its Interim Order:

> In reviewing the arguments on this issue, the position of AIC and Staff can be best summarized as "we have always done it this way, why change now?" In response, the AG and CUB offer valid reasons for reconsidering this practice. No party disputes that AIC will not actually pay any income taxes until 2015, yet AIC would have its ratepayers contribute to CWC as if it were paying income taxes now. Under similar income tax circumstances, ComEd ratepayers do not contribute to CWC. Why this disparate treatment of ratepayers should be allowed to continue has not been justified by AIC or Staff. "We have always done it this way," without more, is no justification. Logic and fairness to ratepayers compel the Commission to adopt the AG's position on this issue. (November 26, 2013 Interim Order at 40-41)

Similarly, it cites the contemporaneous Docket No. 13-0301, where the Commission stated in its Order two weeks later:

> The AG and CUB both urge the Commission to modify the way it has been handling the issue of deferred income taxes in calculating CWC, noting that AIC presently has no income taxes currently payable in 2012, and therefore should have no cash outflows or CWC requirements associated with income taxes. The AG notes that deferred income taxes are not paid out in cash, but are instead deferred for expected payment in future tax years.
>
> The Commission also notes that under similar income tax circumstances, ComEd ratepayers do not contribute to CWC. Although AIC argues that it and ComEd calculate income taxes differently, there appears to the Commission to be no justifiable reason presented to continue this disparate treatment between the two utilities. The Commission therefore finds that is appropriate, based on the evidence presented in this proceeding, to adopt the AG's proposed adjustment on this issue. (December 9, 2013 Order at 16)

The AG contends that the Commission's directive was clear: where AIC is not paying out income taxes in cash, there should be no CWC requirement associated with the income tax. In the instant proceeding, however, the AG observes that the Revenue Lag and Expense Lead days used by AIC in its CWC calculation on Appendix 3 of its formula rate filing incorrectly included a negative amount of "Current Income Taxes" at lines 27 (for the reconciliation year) and 57 (for the filing year). The AG points out that AIC witness Stafford agreed during cross-examination that AIC did not pay income tax in 2013 to the government. (Tr. at 155) AG witness Brosch argues that because AIC's negative current income taxes are not paid by AIC and, due to AIC's Net Operating Loss carryforward position, are not reimbursed to AIC in the form of tax refunds, current income tax expense should be set to zero in the calculation of AIC's CWC.

To remain consistent with the Commission's 2013 orders on this issue, Mr. Brosch proposes eliminating the negative Current Income Tax expense entry on Line 27 and modifying Line 7a accordingly. He illustrates his proposed change to AIC's Appendix 3 at AG Ex. 1.3 at 3. Mr. Brosch's proposal would have the result of increasing CWC, and rate base, by approximately $69,000 for the reconciliation year. He also proposes the equivalent adjustment to lines 37a and 57 of Appendix 3 relating to the filing year CWC calculation, but he elected to not indicate the specific numerical effect in his testimony.

In response to AIC witness Stafford's argument that Mr. Brosch's proposal was "not consistent" with the Commission's Interim Order in Docket Nos. 13-0501/13-0517 (Cons.), the AG counters that Mr. Stafford has simply misread the Commission's two orders relating to this issue in AIC's CWC calculation. The AG asserts that the Commission noted disapprovingly in its Interim Order that "[n]o party disputes that AIC will not actually pay any income taxes until 2015, yet AIC would have its ratepayers contribute to CWC as if it were paying income taxes now." (Interim Order at 41) The AG relies on the Docket No. 13-0301 Order, saying the Commission found "no justifiable reason" for a CWC requirement when AIC has no income taxes currently payable. The AG believes that Mr. Stafford's admission during cross-examination that CWC represents a "source of cash used to fund the Company's operations" undermines AIC's position. (Tr. at 160) The AG observes that the Commission concluded in its two orders last year that no cash is needed to fund income tax payments that are not actually made.

In response to AIC's observation that in Docket Nos. 13-0501 and 13-0517 (Cons.), the AG's position was described as having pointed out that "[ComEd's] lead lag study filed in Docket No. 13-0318 properly includes zero 'Current State Income Tax' and negative 'Current Federal Income Tax.'" (Ameren Ex. 19.0 at 6) It says Mr. Stafford thus argues that the Commission's conclusion makes it proper in this proceeding to include a negative value for Current Federal Income Tax in the CWC calculation. The AG acknowledges that the approved lead-lag values for ComEd in Docket No. 13-0318 included a negative amount for Federal Income Tax in each of the filing year and reconciliation year. Although the treatment of ComEd's 2012 or 2013 CWC needs is not at issue in this proceeding, the AG considers the Commission's approved treatment in that proceeding incorrect insofar as it included a negative income tax expense amount in the lead-lag calculations at a time when ComEd was in a net operating loss carryforward situation.

The AG states that Staff witness Everson originally agreed with Mr. Brosch's proposal to set current federal income tax expense to zero in the lead-lag study, but later changed her position to support the methodology advocated by AIC, including the negative value for current federal income tax. The AG asserts that Ms. Everson's recommendation is based on her understanding of the intent of the Commission's Order in Docket No. 13-0301 counseling in favor of harmonizing the CWC treatment of income tax between ComEd and Ameren. The AG notes that the Staff witness stated her review of ComEd's CWC in Docket No. 13-0318 showed that deferred taxes are removed and current state and federal income tax expenses, one of which was negative, were included in the revenues used in the calculation of CWC, citing Appendix A to the Commission's Docket No. 13-0318 Order. (Id. at 9) Ms. Everson testifies that AIC's treatment of deferred and current income tax in the CWC calculation is consistent with ComEd's equivalent treatment.

The AG contends that for the same reasons that Mr. Stafford's position is flawed, Ms. Everson's position fails to recognize the absence of AIC's actual cash income tax transactions. The AG states that she admits in a discovery response that generally the CWC calculation should be made based upon or representative of actual transactions. (See AG Cross Ex. 8 at 3) It also says she agreed that she has not tracked AIC's actual income tax payments. (See AG Cross Ex. 8 at 1) Nor, the AG continues, did Ms. Everson contest that AIC is in a tax loss carryforward position in 2013 and 2014. (See AG Cross Ex. 8 at 2) Finally, the AG observes that Ms. Everson admits in a discovery response that she accepted AIC's lead-lag study for purposes of her CWC calculation with respect to AIC's negative current income taxes, and that her calculation was not based on AIC's actual current income tax payments or actual cash flows in 2013. (See AG Cross Ex. 8 at 10) In light of what the AG perceives as Ms. Everson's failure to investigate AIC's actual income tax payments, payments which in fact do not exist, the AG recommends that the Commission not give weight to her position.

In its Reply Brief, the AG reiterates that where the Company is in a net operating loss ("NOL") carryforward situation and has no cash income tax payments, calculated ratemaking negative current income taxes should be completely removed from the CWC calculation. The AG challenges AIC's assertion that its proposed CWC treatment of income taxes in this proceeding precisely reflect[s] the Commission's determination in Docket Nos. 13-0301 and 13-0501/0517 (Cons.). The AG places emphasis on the statement: "No party disputes that AIC will not actually pay any income taxes until 2015, yet AIC would have its ratepayers contribute to CWC as if it were paying income taxes now." (Docket Nos. 13-0501/0517 (Cons.), November 26, 2013 Order at 40-41) It also points the Commission's finding "AIC presently has no income taxes currently payable in 2012, [it] therefore should have no cash outflows or CWC requirements associated with income taxes" citing Order Docket No. 13-0301, at 16. The AG maintains that because AIC is presently in a NOL carryforward situation and will be through 2016, negative income taxes should be removed from any CWC calculations.

The AG explains that it regrettably erred in its Statement of Position when it asserted that Mr. Brosch said ComEd's lead lag study in Docket No. 13-0318 ". . . properly includes zero 'Current State Income Tax' and negative 'Current Federal Income Tax' in the calculation of CWC filings . . . ." The AG quotes Mr. Brosch's testimony:

> Q: Has ComEd, in its formula rate case filings, including Docket No. 13-0318, more appropriately accounted for deferred income taxes as a non-cash expense that should not be allowed to overstate CWC?
>
> A. Yes. At ComEd Ex. 3.18, App 3, that utility's lead lag study includes zero "Current State Income Tax" and negative "Current Federal Income Tax" in the calculation of CWC, which has the effect of not increasing CWC when the utility is experiencing income tax loss carryforwards. (Docket No. 13-0301, AG Ex. 1.0C at 27-28)

The AG elucidates that Mr. Brosch argued that ComEd's treatment of the CWC calculation for its income taxes was "more appropriate" than AIC's proposed treatment in Docket No. 13-0301, but he actually did not state that ComEd's treatment was "proper." The AG explains that "Mr. Brosch believed that ComEd's Docket No. 13-0318 CWC treatment of income taxes, while not ideal, was more appropriate than Ameren's Docket No. 13-0301 proposed treatment because it did not increase CWC when the utility is experiencing NOL carryforwards." (AG Reply Brief at 12. It asserts that as he stated in this proceeding, Mr. Brosch believes that "the most appropriate treatment when a utility is in a NOL carryforward position and paying negative income taxes is to *completely remove* income tax expense from the CWC calculation." Id., emphasis in original. The AG asserts that notice should be taken that its proposed treatment in this proceeding would *increase* AIC's rate base by approximately $69,000 for the reconciliation year. Id. emphasis in original.

The AG states that Staff witness Everson did not justify her proposal on any ground other than to achieve compatibility between ComEd and AIC's CWC calculations. It says that Ms. Everson agreed in a discovery response that generally, the CWC calculation should be made based upon or representative of actual transactions. It says the Staff witness agreed that she has not tracked Ameren's actual income tax payment, and that her CWC calculation was not based on Ameren's actual current income tax payments or actual cash flows in 2013

The AG joins Staff in suggesting that the Commission should specifically state in its conclusion which elements it considers appropriate to actually implement its stated intention of uniformity in the CWC calculation between ComEd and Ameren.

The AG recommends that the Commission adopt its proposal for treating income taxes in the CWC calculation, even if it might differ slightly from the approved CWC calculation for income tax in Docket No. 13-0301. It asserts that its proposed treatment is consistent with the Commission's logic declared in Docket No. 13-0301: when no income taxes are currently payable, no income taxes should be included in the CWC calculation.

The AG contests AIC's assertion it has not described how its proposal would be implemented and that there is potential for confusion. It quotes AIC:

> . . . the AG's proposal would require that a single item in AIC's cash working capital calculation be replaced with a zero,—but only when the actual value that should be reflected for that item is negative. [] The AG has not described how this change would be implemented in AIC's formula rate schedules and appendices. Thus, there is potential for confusion as well." (AIC Initial Brief at 23)

The AG finds it surprising that after clearly comprehending and describing the AG's proposed change to the Company's formula rate filing sheets, Ameren suggests that the proposal is somehow confusing. It says the direct testimony of Mr. Brosch made it clear:

> 2013 Current Income Tax expenses should be recognized to be completely deferred income tax expenses, which are non-cash expenses properly removed from the CWC calculations. App 3 line 7a had already been modified with the caption, "(Less) Deferred Income Taxes" so as to reduce the total revenues subject to the revenue lag day value, in apparent compliance with the Commission's Order in Docket No. 13-0301. However, the amount used on line 7a should be revised to completely eliminate Current Income Tax on line 27. (AG Ex. 1.0 at 23)

It states that AG Ex. 1.3, page 3 also illustrates how the Company's Appendix 3, page 1 should be altered for the reconciliation year at lines 7a and 27. The AG also opines that Mr. Brosch made clear that Appendix 3, page 2 should be equivalently altered for the filing year at lines 37a and 57. (AG Ex. 1.0 at 23-24)

c. Staff Position

Staff's analysis focuses on the Commission's stated intention, in Docket No. 13-0301, to end the disparate treatment between ComEd and AIC. Staff maintains that the calculation of CWC should not include deferred income taxes but should include current income taxes, regardless of whether the current income taxes are positive or negative. Staff asserts that calculating CWC for AIC in this manner is consistent with the calculation of CWC for ComEd in Docket No. 13-0318 and is required by the Commission's Order in AIC's prior formula rate proceeding, Docket No. 13-0301. Staff states its position changed after the filing of direct testimony. Staff relates that it modified its position upon further evaluation of the Commission's conclusion in Docket No. 13-0301.

Staff states that an examination of Appendix A, Schedule 10FY in ComEd Docket No. 13-0318 shows that its CWC calculation includes negative federal income taxes and thus, negative income taxes are actually included in ComEd's CWC calculation, contrary to the Commission's stated understanding in Docket No. 13-0301. Staff therefore concludes that the Commission's stated intent in its Order in Docket No. 13-0301 to eliminate the disparate treatment between ComEd and AIC was not achieved. As a result, in rebuttal testimony, Ms. Everson includes negative current federal income taxes in her calculation of CWC as it was actually calculated in Docket No. 13-0318. Staff points out that Ms. Everson's rebuttal position thus achieves compatibility between ComEd and AIC's CWC calculations, which is what Staff understands to be the Commission's intent in its Order in Docket No. 13-0301.

Staff expresses concern that the Appendices supporting the record in Docket No. 13-0301 did not include a separate identification of current versus deferred income taxes; thus, all federal income taxes included on Schedule 1, lines 20 and 21, were included as deferrals on Schedule 10, line 3a, regardless of whether some portion of the total was current or deferred. (See Docket No. 13-0301, December 9, 2013 Order Appendix A, Schedules 1 and 1) The AG proposes to eliminate all current and deferred income taxes since AIC is not presently paying current income taxes due to its net operating loss position.

The issue of which income tax values should be included or excluded in the CWC calculation, and many of the respective arguments on that subject, has been repeated in Docket No. 13-0301 and Docket Nos. 13-0501/13-0517 (Cons.) and, therefore, impact this docket. But in Staff's opinion the actual implementation is not evident in the respective final orders. Staff suggests that the Commission revisit the issue and put to rest what income tax components of CWC should be included, whether current or deferred, state or federal, and whether positive or negative. Staff recommends that the Commission specifically state in its conclusion which elements it considers appropriate to actually implement its stated intention of uniformity in the CWC calculation between ComEd and AIC.

Staff's recommendation is to exclude deferred income taxes and allow current income taxes as shown in Staff's rebuttal testimony as those amounts flow through the revenue requirement, regardless of whether those amounts are positive or negative. Thus, Staff continues, income taxes are calculated in the revenue requirement and are consistently applied to AIC's CWC requirement. Staff believes that this position is consistent with the Commission's prior stated intentions in its Order in Docket No. 13-0301 and the Interim Order in Docket Nos. 13-0501/13-0517 (Cons.) and the actual calculations used to determine CWC for ComEd in the Order in Docket No. 13-0318.

In its Reply Brief, Staff states it is in agreement with AIC on the calculation of current income taxes in CWC. It states their calculation includes negative current income taxes, consistent with the calculation approved in the Commission Order in Docket No. 13-0318. Staff says the CWC calculation does not include state and federal deferred income taxes. Staff explains that its CWC calculation implements the Commission's directive in its order in Docket No. 13-0301 that there should not be disparate treatment between ComEd and Ameren in calculating CWC. Staff asserts that negative current federal income taxes and positive current state income taxes were included in the calculation of CWC citing Docket No. 13-0318, Order, Appendix A, Schedule 10FY, column (b), lines 30 and 31. . Staff concludes that the Staff CWC calculation in the instant case is consistent with the Commission's stated intent in its 13-0301 Order and is also consistent with the actual outcome in the Docket No. 13-0318 Order.

Staff asserts that the AG fails to acknowledge the Commission's intention to remove the disparate treatment between ComEd and Ameren in the calculation of CWC with regard to the recognition of negative current federal income taxes. Staff states the AG argument reflects the misleading impression that the Commission was concerned only that there should be no increased CWC for income taxes if the Company was not paying out cash for income taxes. It states the AG fails to acknowledge is that the Commission's Order in Docket No. 13-0301 presumes that when a company is not paying income taxes, current income tax expense would be zero, when in fact the non-payment of income taxes in ComEd Docket No. 13-0318 results in negative current income tax that increases the CWC requirement. Staff explains that the Commission's statement regarding similar circumstances and the presumed outcomes between ComEd and Ameren do not accurately represent the actual situation. Staff emphasizes the Commission's stated intent to eliminate disparate treatment and concludes that the elimination of disparate treatment must be the determinative consideration in deciding this issue.

Staff asserts the AG argument regarding the recognition of the absence of actual cash income tax transactions in CWC calculations is irrelevant. Staff states that this AG argument is nothing more than a distraction from the core issue of whether the calculation of CWC that is used by AIC and ComEd are comparably calculated. Staff asserts it is not necessary to review cash income tax payments to see that the calculation of CWC in the ComEd 13-0318 Order did not include zero as the value for current federal income taxes as the AG assumes. Staff maintains that each company's calculation actually uses negative income taxes in the CWC calculation where the revenue requirement determines negative income taxes, regardless of the cash payment of taxes. Staff also states that the AG's assertion regarding Staff's failure to recognize the absence of actual cash income tax transactions is in direct conflict with its statement that it did not contest that Ameren is in a tax loss carryforward position in 2013 and 2014. Staff asserts that the acknowledgement that a company is in a tax loss carryforward position inherently includes a knowledge that it is likely that no cash payment of taxes will occur.

Staff emphasizes the Commission's expressed intent in achieving comparability between ComEd and AIC CWC calculations and asserts the AG dismisses this directive. Staff recommends consideration of the Commission's actual treatment of CWC in the oft-referenced ComEd 13-0318 Order since it speaks to the disparate treatment that would occur if the AG's position were approved.

d. Commission Conclusion

AIC proposes to include current income taxes, regardless of whether they are positive or negative, in its CWC calculation. The AG proposes an adjustment to the calculation of CWC due to AIC's net operation loss carry-forward and the fact that AIC is not paying current income taxes. The AG proposes to essentially zero out the current income taxes rather than allowing a negative value as advocated by AIC and Staff.

While the AG discusses rather extensively the effect of its proposal on the expense portion of the CWC calculation, there is relatively little discussion of the corresponding adjustment to the revenue portion of the CWC calculation. The impact of the AG's adjustment on the CWC balance, considering both the expense and the revenue adjustments, is approximately $68,000. Given AIC's CWC balance of approximately $8.6 million and rate base of approximately $2 billion, the Commission believes the impact on AIC's revenue requirement is *de minimi*s.

The Commission finds AIC's treatment of current income tax in its CWC calculation consistent with ComEd's treatment of current income tax in its CWC calculation under Docket No. 13-0318. No compelling reason has been given to reverse the conclusion that AIC should calculate its CWC balance consistent with ComEd's methodology. Therefore, the Commission adopts AIC's proposal for the treatment of current income taxes in its CWC calculation.

3. Materials and Supplies

AIC's M&S inventory is included in its rate base, and is therefore a source of profit for AIC because it earns a return on the amount included in "materials and supplies." M&S consists of inventory held for use in day-to-day maintenance, construction, and emergencies. Holding these supplies in inventory allows AIC to complete routine maintenance as well as respond to emergencies, such as storm damage. AIC's M&S balance has been increasing, year over year, since 2010. The following table depicts the escalation:

Materials and Supplies
(in thousands)

	2010	2011	2012	2013
Jurisdictional Balances Year-End	$35,334	$38,601	$46,415	$50,380
Yearly Percentage Change		9%	20%	9%
Cumulative Percentage Change		9%	31%	42%

a. CUB/IIEC Position

Recognizing that AIC's M&S inventory has increased by 42% since 2010, CUB/IIEC witness Gorman concludes that the prudence and reasonableness of this dramatic increase has not been adequately justified. He recommends an adjustment to reflect a more reasonable level of M&S. Mr. Gorman argues that a reasonable level would be equal to an average of the M&S balances from 2010 through 2013, which results in a reduction to the M&S rate base balance of $6.6 million and a reduction of $1.7 million to the revenue requirement.

CUB and IIEC understood AIC to initially argue that the significant increase was justified as a result of NESC compliance and purchases for projects under Section 16-108.5 (Infrastructure investment and modernization: regulatory reform) (“EIMA") of the Act. They note that AIC witness Getz claimed that there were “major units of stock that are used primarily for construction projects.” (Ameren Ex. 14.0(Rev.) at 17) Mr. Getz also indicated, they observe, that some of the inventory was being held for additional EIMA construction spending. While it may be true that AIC is increasing its construction, particularly EIMA-related projects, CUB and IIEC argue that an increase in construction spending is not a direct corollary to an increased level of M&S. They point out that M&S, by AIC’s own definition, are “inventory.” According to CUB and IIEC, this means that the M&S are not currently being used for construction, but rather are being stored so that they are available for emergencies, maintenance, etc. CUB and IIEC contend that the inventory included in M&S is differentiated from CWIP, which includes current construction work on capital projects. Furthermore, they assert that increased EIMA spending does not explain the significant year over year increase and why AIC is required to hold this amount of M&S for that construction in inventory. CUB and IIEC find the situation particularly troublesome given that the longer AIC holds M&S in inventory, the greater profits it sees since those M&S earn a return.

CUB and IIEC also state that neither Mr. Getz nor any other AIC witness has alluded to any delays or other problems in obtaining the necessary M&S to perform increased construction. They therefore conclude that there should be no need for large stores of inventory, or for acquiring inventory well in advance of when it is needed. AIC's claim that “[a]dditional M&S inventory is required to accommodate the increased level of construction spending that has occurred and is expected to occur under the EIMA in 2014” (Ameren Ex. 14.0(Rev.) at 17) is not logical in the opinion of CUB and IIEC because equipment used for increased construction need not be purchased well in advance of when it is needed, only to earn a return while it waits in inventory. If the supplies are needed for new capital projects, such as those under the EIMA, CUB and IIEC maintain that they should not simply be sitting in storage, recorded as M&S. Rather, M&S that are needed to support current planned construction can be recorded as CWIP. If AIC’s steady increases in M&S inventory costs are continually allowed in rates, CUB and IIEC fear that AIC will be encouraged to buy supplies as soon as possible, regardless of how soon they are actually needed, unnecessarily inflating rate base.

Since AIC earns a return on the balance of its M&S inventory, CUB and IIEC aver that it is particularly important that it justify the level of that inventory. CUB and IIEC argue that AIC bears the burden of proving that the increases it has experienced over the last few years are actually needed to support planned construction spending, including EIMA distribution infrastructure, in the rate-effective period. Despite Mr. Gorman's requests for explanation and justification (both in discovery and in his testimony), CUB and IIEC state that the only specific M&S cost increase Mr. Getz explained was a $0.8 million increase in the cost of composite poles compared to wood poles. They state that the rest of Mr. Getz's testimony focuses generally on increases in capital projects, but does not address materials being purchased only to sit in inventory earning a rate of return.

Mr. Gorman bases his adjustment on AIC's failure to adequately explain its current levels of M&S inventory. According to CUB and IIEC, it is not a normalization adjustment, as contemplated by the EIMA. Rather, they explain that it rests on AIC's failure to meet its burden of proving that the current level of M&S is prudent and reasonable. Inclusion of costs in FERC Form 1 in the formula rate process does not make them automatically recoverable. CUB and IIEC direct the Commission's attention to Section 16-108.5(c), which provides: "[n]othing in this Section is intended to allow costs that are not otherwise recoverable to be recoverable by virtue of inclusion in FERC Form 1." They reiterate that it is AIC's burden to prove that its proposed rates are just and reasonable. While Section 16-108.5(c)(1) states that "[t]he sole fact that a cost differs from that incurred in a prior year or that an investment is different from that made in a prior calendar year shall not imply the imprudence or unreasonableness of that cost of investment," CUB and IIEC insist that Mr. Gorman's adjustment is not based on the "sole fact" that the M&S balance increased significantly. Rather, they continue, that fact was the basis for requesting that AIC justify its current levels of inventory, which it failed to do.

AIC repeatedly asserted that it was Mr. Gorman's testimony that was lacking, because he performed no compelling analysis or study. CUB and IIEC acknowledge that he did not perform an in-depth analysis of each supply in AIC's inventory, but maintain that the decision not to do so is justified because AIC did not even make a prima facie case of the reasonableness of the inventory levels. Further, they observe that in the face of criticism of the level of M&S, AIC did not offer or present an in-depth analysis or justification of its detailed storage inventory either. CUB and IIEC assert that it is well-established that "[r]equiring intervenors to establish unreasonableness is… no substitute for requiring proof of reasonableness." (<u>People ex rel. Hartigan v. Illinois Commerce Comm'n</u>, 117 Ill. 2d 120, 135-36 (1987)) The mere presentation by a utility of the costs it incurred is not enough to support an affirmative showing of reasonableness. (Id. at 133, 136) Though he claims to have offered "rationales" for the dramatic increase in inventory levels, CUB and IIEC state that Mr. Getz merely made generic statements about AIC's construction plans and only specifically attempted to justify $0.8 million of AIC's M&S inventory balance. CUB and IIEC reiterate that an increase in construction does not necessarily equate to an increase in the supplies being held in storage. Mr. Getz's testimony, they argue, is not based on a review of

AIC's particular needs and requirements for distribution operations; general statements about construction do not explain which specific components of inventory are required to meet this need. CUB and IIEC maintain that AIC failed to accept Mr. Gorman's invitation to explain why it has such increased levels of materials just waiting, currently unused, in its inventory, and therefore missed its opportunity to justify these costs.

AIC makes much ado about the fact that Mr. Gorman's adjustment used an average of the previous four years as a proxy for a reasonable level of M&S. CUB and IIEC respond that using that level as a proxy is not the same as a "normalization adjustment." A normalization adjustment, they explain, is usually an adjustment that is made in the face of a cost that varies from year to year over a period of years or month to month over a period of months. CUB and IIEC point out that the M&S balance here does not vary from year to year but has steadily increased without a detailed and specific explanation of the reasons for the increase. While the significant, year-over-year cost increases were the catalyst for Mr. Gorman's concern about the M&S balance, that was not the basis of his adjustment. The basis of his adjustment, CUB and IIEC assert, was AIC's lack of justification for its excessive M&S in inventory at 2013 year-end.

b. AIC Position

In response to the proposal by CUB and IIEC, AIC states that the EIMA permits the recovery of a utility's actual delivery costs, subject to a determination that the costs were prudently incurred and reasonable in amount consistent with Commission practice and law. One of the formula rate cost inputs that is updated annually is the year-end M&S balance included in rate base. In this proceeding, AIC's formula rate reflects a 2013 year-end jurisdictional M&S balance of $50.38 million. That amount constitutes a 9% increase from the 2012 year-end jurisdictional M&S balance of $46.42 million. CUB and IIEC claim that this increase is not justified, and in its place, propose to substitute the average year-end M&S balance from 2010-2013. AIC agrees with CUB and IIEC that this adjustment would reduce rate base by $6.6 million and the revenue requirement by $1.7 million.

In traditional ratemaking, where rate cases do not happen every year, the Commission may normalize or average a volatile expense to include in the revenue requirement a prudent and reasonable amount representative for the proposed test year. But in formula ratemaking, AIC states that "[n]ormalization adjustments shall not be required." (220 ILCS 5/16-108.5(d)) AIC therefore asserts that the "letter of the law" does not authorize the Commission to substitute an averaged amount and forego an analysis of the actual cost for the year. Instead, in each update proceeding, AIC states that the Commission is tasked with reviewing the prudence and reasonableness of the actual year-end M&S balance from the prior calendar year. Under Illinois' formula rate regulatory framework, AIC points out that there can be no "gaming the system" by utilities in the choice of the test year. AIC contends that the mechanism requires the actual annual change in a particular cost, no matter how volatile, to be reflected in rates.

AIC indicates that this ratemaking structure does not employ an averaging of a fluctuating cost to determine a reasonable, representative amount.

CUB and IIEC witness Gorman notes that the year-end M&S balance has increased, not just from 2012 to 2013, but since 2010. While tacitly acknowledging the increasing nature of the M&S balance, AIC argues that the pertinent increase that should concern the Commission is the increase from 2012 to 2013. In Docket No. 13-0301, the Commission approved an updated formula rate revenue requirement without making any adjustments to the year-end 2012 jurisdictional M&S balance. AIC states that the purpose of the annual update proceedings is to review the change in cost inputs to the utility's formula rate from the cost inputs used in the prior calendar year. AIC points out that the EIMA expressly provides, "The Commission's determination of the prudence and reasonableness of the costs incurred for the applicable calendar shall be final upon entry of the Commission's order and shall not be subject to reopening, reexamination, or collateral attack in any other Commission proceeding, case, docket, order, rule or regulation . . . ." (220 ILCS 5/16-108.5(d)) AIC interprets this language to mean that the focus here can only be on the change in the year-end M&S balance from 2012 to 2013.

AIC also criticizes Mr. Gorman for not reviewing or analyzing the actual year-end 2013 M&S balance. In response to data request IIEC 2.02, AIC submitted an excel schedule that showed the year-end storeroom balances from 2010 to 2013 for all of the storerooms across AIC's entire service area. Mr. Gorman did not refute or challenge any of the information provided. Nor, AIC continues, did he attempt to explain why, for example, he believed particular storeroom inventories were overstated or imprudent in amount. AIC reports that Mr. Gorman did not even submit additional discovery requests on the individual storeroom balances. AIC observes that instead, Mr. Gorman simply pointed to lower amounts in prior years in support of his adjustment. AIC argues that that basis alone—the fact that the balance was lower in prior years—is not consistent with the EIMA, which states, "The sole fact that a cost differs from that incurred in a prior calendar year or that an investment is different from that made in a prior calendar year shall not imply the imprudence or unreasonableness of that cost or investment." (220 ILCS 5/16-108.5)

In contrast to Mr. Gorman, AIC maintains that it has explained and justified the increase in the year-end M&S balance. M&S includes Account 154, inventory materials and equipment maintained to support operations, maintenance, and construction. This includes wire and cable, poles and crossarms, fuses, circuit breakers, reclosers, insulators, and other pole and line hardware. The M&S balance also includes Account 163 – Stores Undistributed costs associated with the time and labor of personnel working in the storeroom. The M&S inventory ensures that adequate materials are on hand to support AIC's day-to-day operations and maintenance activities, construction projects, and emergencies. AIC's central warehouse consolidates and distributes these common materials to local storerooms. In addition, AIC's storm trailers carry these common materials for use in service restoration and to supplement local inventory levels during severe weather events. AIC states that this inventory process supports the electric delivery operations by ensuring that common materials are available to AIC field personnel as needed and at the least cost.

AIC witness Getz testifies that the year-end 2013 M&S balance increased to reflect and accommodate the increased level of construction spending that has occurred since 2010 and is expected to occur in 2014. Mr. Getz notes that electric distribution construction capital expenditures (excluding meters and line transformers, which are not charged to M&S) increased 27% in 2013 from 2012 (and 60% from 2010). Specific areas of the increase were for distribution reliability work (up 54% in 2013 from 2010) and distribution line work (up 71% in 2013 from 2010). AIC adds that included in this work is the incremental EIMA construction spending: $7.3 million in EIMA plant additions placed in service in 2012, $3.5 million in EIMA plant additions placed in service in 2013, and $27.3 million projected to be placed in service in 2014. Mr. Getz also identifies as drivers of the inventory increase at the storeroom level by division: additional reliability, distribution, government relocation, and storm-related work, including tornados and storms that impacted Divisions 1 and 3 in November 2013. According to AIC, the evidence shows that there has been an increase in material utilization and an improvement in inventory turnover. Thus, although the increased distribution work supports a larger M&S inventory, AIC asserts that the materials still are being prudently purchased and efficiently used. For all of these reasons, AIC urges the Commission to reject the proposed adjustment of CUB and IIEC.

AIC denies claims by CUB and IIEC that AIC has failed to make a prima facie case that the increase in the year-end balance of M&S inventories from 2012 to 2013 was prudently incurred and reasonable in amount. AIC asserts that it identified the drivers of the increase, at a macro level across the company, and explained the correlation between the increase in incremental distribution activities and the increase in inventories. AIC states further that it identified the drivers of the increase, at a micro level by division, and provided year-end inventory balances for the individual storerooms. AIC also believes that its alleged increase in turnover and utilization of the inventories directly contradicts CUB and IIEC's baseless claim that AIC has increased levels of materials just waiting, currently unused, in its inventory.

AIC also criticizes CUB and IIEC for introducing a new argument in brief, namely that construction-related M&S inventories should be recorded as CWIP. CUB and IIEC did not present this argument in testimony, and they did not cross-examine Mr. Getz on this proposed accounting treatment. AIC states that they do not even identify any adjustments to the affected accounts. Nor, AIC continues, have CUB and IIEC cited any authority in their brief to support the suggestion that construction-related inventories can not be included in rate base as part of the M&S balance. As such, AIC asserts that the record does not contain any factual, legal, or regulatory accounting basis to support their untimely argument. In contrast, AIC contends that authority exists questioning the removal of construction-related inventories from the M&S balance. AIC references several cases in support of this contention at page 18 of its Reply Brief.

c. Commission Conclusion

The Commission has considered the parties' arguments and recognizes the increase in the M&S balance over the past few years. Although the increase in expenses in considerable, the Commission will not adopt the adjustment proposed by CUB and IIEC. The Commission comes to this conclusion because CUB and IIEC have not convinced it that such an adjustment is permissible under the EIMA. The averaging of past years' M&S balances would seem to conflict with the bar against normalization of expenses and investments in the EIMA. Even if such an adjustment were permissible under the EIMA, the Commission is also not convinced that the costs (or investments) at issue here should be recorded as CWIP, rather than as rate base items.

4. Alternative Rate Base Treatment of ADIT Associated with Reconciliation Balance

The issue addressed in this section is the AG’s alternative proposal to deduct ADIT associated with the EIMA reconciliation balance from rate base. This proposal is an alternative to the proposals of the AG, CUB, and IIEC to reduce the reconciliation balance by the amount of ADIT before calculating interest, which are discussed below with regard to the reconciliation balance.

a. AIC Position

AIC contends that the AG's proposal is simply an alternative method for achieving the same thing the AG and other intervenors have now proposed in various forms in at least five cases: to adjust the calculation of reconciliation interest for taxes. AIC argues that such an adjustment, no matter what the form, is contrary to the plain language of the EIMA and has never been adopted by the Commission. AIC explains that the EIMA specifies each variable and mathematical step necessary to complete a calculation of interest on the reconciliation balance. The calculation follows the prescribed interest model—customers are charged or receive interest based on a predetermined rate. The interest charge is simply a charge for the use of money, and the costs to the utility in carrying and financing the reconciliation balance are not considered. Consistent with the model, no adjustment is specified in the EIMA for the effect of taxes related to the reconciliation balance.

According to AIC, all of the intervenor proposals on reconciliation interest, including the AG’s alternative proposal at hand, ask the Commission to exercise some vague discretionary power, not provided in the EIMA, to include cost-based factors in the calculation of reconciliation interest. AIC contends that this is beyond the Commission’s authority. But even if the Commission were authorized to apply cost-based principles, AIC argues that the AG, CUB, and IIEC proposals still must fail because they apply cost-based principles inconsistently and unfairly. As an example, AIC states that when the AG, CUB, and IIEC adjust the reconciliation balance for taxes before applying interest, they do not propose to “gross-up” the interest rate for taxes as well. The AG’s alternative proposal, AIC continues, is similarly inconsistent and imbalanced, because it would reduce AIC's rate base, where the return is grossed up for taxes, but would not gross-up the reconciliation interest for taxes.

AIC relates that variations on the AG's alternative proposal—all with the same goal of adjusting the reconciliation interest calculation for taxes—have been proposed in several previous formula rate cases. These proposals have not been adopted:

- In Docket No. 11-0721, the AG proposed that, to "ensure that the reconciliation interest calculation recognizes the non-investor-supplied source of funds represented by reconciliation ADIT," the Commission should either (1) proportionately reduce the allowed interest rate to a net of income tax equivalent rate, or (2) apply the complement of the income tax rate to the over- or under-collected balance, with interest then calculated by applying the approved interest rate to the over-collection or under-collection net of income taxes. (ComEd, Docket No. 11-0721, October 3, 2012 Order on Rehearing at 30) The Commission did not adopt these proposals. (Id. at 36)

- In Docket No. 13-0553, the AG proposed that the reconciliation balance should be reduced by the amount of related ADIT before calculating interest. (ComEd, Docket No. 13-0553, November 26, 2013 Order at 43) The Commission rejected this proposal. (Id.)

- In Docket Nos. 13-0501/13-0517 (Cons.), the AG proposed to reduce the reconciliation balance by the amount of ADIT before calculating interest. (AIC, Docket Nos. 13-0501/13-0517 (Cons.), November 26, 2013 Interim Order at 25-26) The Commission rejected the adjustment. (Id.)

AIC maintains that these decisions confirm that calculation of reconciliation interest set forth in the EIMA does not consider the utility's tax costs.

AIC understands AG witness Brosch to propose that, instead of deducting the associated ADIT from the reconciliation balance before calculating interest as AG witness Effron and IIEC and CUB witness Gorman propose, the Commission could deduct the reconciliation ADIT from rate base. But as AIC reads the law, the EIMA does not provide for such a rate base deduction. AIC asserts that the EIMA expressly provides the terms of the calculation of interest on the reconciliation balance, and it does not include a rate base deduction for deferred taxes related to the reconciliation balance:

> Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year. 220 ILCS 5/16-108.5(d)(1)

As AIC reads the statute, the Act specifies each step of the interest calculation. First, AIC asks what is the principal balance to which interest must be applied? It is the "over-collection or under-collection indicated by such reconciliation." (Id.) AIC states that "such reconciliation" refers to a specific sum, namely, the difference between "the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) [and] the actual revenue requirement for the prior rate year (determined using a year-end rate base)." (Id.) Having established the principal, the statute then precisely defines the rate of interest to be applied: "a rate equal to the utility's weighted average cost of capital." (Id.) AIC states that no provision is made to adjust rate base or the reconciliation balance for related taxes.

As it did elsewhere in the EIMA, AIC points out that the legislature could easily have added language permitting the Commission to make tax adjustments to the reconciliation interest calculation. Rather than doing so, AIC relates that the balance to which interest is applied is "over-collection or under-collection indicated by such reconciliation," no more or less. (220 ILCS 5/16-108.5(d)(1)) Likewise, the legislature could have adjusted the calculation of the interest rate, but it did not. Instead, AIC notes that the words "equal to" denote mathematical identity and, as the Commission found in Docket No. 13-0553, leave no room for changing the rate, up or down. In short, AIC concludes that the EIMA contains no provision adjusting the reconciliation interest calculation for the effect of taxes related to the reconciliation balance.

In arguing for the AG's alternative proposal, Mr. Brosch repeatedly asserts that the reconciliation-related ADIT is "jurisdictional," and that all "jurisdictional" items must be included in rate base. AIC counters that basic ratemaking theory requires inclusion of both the asset or cost item and the related ADIT in rate base. AIC argues that to include one and not the other would unreasonably and inconsistently favor either the ratepayer or the utility. The reconciliation balance is not in rate base. Indeed, AIC observes, the AG has argued that the reconciliation balance can not be in rate base. Therefore, AIC concludes that it would not be appropriate to include the reconciliation ADIT in rate base.

AIC asserts that the AG's position is inconsistent with positions taken by the AG's own witnesses, as well as that of Staff witness Everson and AIC witness Stafford on other ADIT-related issues. AIC reports that all of those witnesses advocate the exclusion from rate base of ADIT-related items where the underlying cost item is not in rate base. Mr. Brosch noted that AIC intended to review whether its ratemaking treatment of several debit ADIT balances (that increase AIC's rate base) was "consistent with the ratemaking treatment of the related costs" and to remove the balances from rate base where appropriate. (AG Ex. 1.0 at 20-21) Likewise, Mr. Effron and Ms. Everson both affirmatively recommended that AIC remove certain of the same deferred tax balances from rate base because the associated item was not included in rate base. (AG Ex. 2.0 at 7-8; Staff Ex. 1.0 (2d Rev.) at 9-10) Mr. Stafford accepts these recommendations in his rebuttal testimony. AIC notes that all of these witnesses recognized the need to ensure consistency in ratemaking treatment of the ADIT and the related items.

Yet the AG's alternative proposal would deduct reconciliation related ADIT from rate base even though the related cost item—the reconciliation balance—is not in rate base. AIC urges the Commission to disregard what it characterizes as an inconsistent, results-oriented recommendation. If the Commission were to endorse this approach, AIC states that it would require a re-evaluation of the ratemaking treatment of $6 million in costs currently excluded from rate base.

AIC anticipates that the AG will argue that ADIT adjustments to rate base are common in Illinois ratemaking. But such arguments, AIC asserts, assume that the item generating ADIT is also in rate base. As an example, AIC states that the most common and well-understood type of ADIT pertains to depreciable assets included in rate base. But the ADIT at issue for the reconciliation balance did not arise from the depreciation of assets. Instead, the ADIT associated with the reconciliation balance is "accumulated" and "deferred" because the utility's revenue (in an over-collection year) or its expense (in an under-collection year) does not occur until the reconciliation proceeding is complete. AIC maintains that the ADIT at issue here is not "traditional" ADIT, making any reference to "traditional" ADIT adjustments inapplicable.

Mr. Brosch also attempts to justify the deduction of reconciliation ADIT from rate base on the theory that recovery of interest at a rate equal to the weighted average cost of capital ("WACC") rate is "comparable" to including the reconciliation balance in rate base. AIC responds that the treatment of a reconciliation balance under the EIMA, even with application of a WACC interest rate, is fundamentally different from the treatment of rate base. A utility is entitled to recover a full return on its rate base. This means that the return on rate base is grossed-up for taxes, so that the utility actually earns the return established by the Commission as just and reasonable, after the utility pays taxes. To demonstrate its point, AIC states that in its last formula rate case, the Commission approved a WACC of approximately 8%. In order to ensure that AIC actually earned an 8% return, even after it paid taxes, the Commission grossed-up the rate of return, and then applied the grossed-up rate to rate base. AIC reports that the gross-up factor was approximately 70%.

AIC states, however, that no such gross-up factor is applied to the statutory interest rate on the reconciliation balance, as the Commission recognized in Docket No. 13-0553: "This Section of the Act does not provide for adjusting WACC for the purported impact of income taxes." (ComEd, November 26, 2013 Order at 43) There, the Commission confirmed that the WACC interest rate set by the EIMA was not a full "return," stating, "[t]he fact that the legislature, in P.A. 98-0015, specified an interest rate [for the reconciliation], not a return, and set WACC as the interest rate to be applied to the reconciliation balance without any mention of a 'gross-up' for the effect of income taxes is determinative." (Id.)

According to AIC, Mr. Brosch admits that the WACC interest rate on the reconciliation balance is not the "same" as rate base treatment. His own analysis of the revenue requirement effect of including an item in rate base confirms that rate base treatment is not “comparable” to the application of the WACC interest rate. AIC points out that as AG Ex. 3.1 makes clear, when something is in rate base, the WACC percentage is applied, then an interest synchronization adjustment is made and the amounts are grossed up for taxes. AIC states that this indicates a full return would be provided by a fixed interest rate of approximately 11.4%, not the 8% WACC. AIC concludes that Mr. Brosch’s position that the treatment of the reconciliation balance and a rate base item are “comparable” is simply wrong.

AIC argues that the foregoing discussion shows that the AG’s recommendation contradicts both the express provisions of the EIMA and proper ratemaking practices. But even if these legal obstacles did not exist, AIC states that the recommendation also has serious practical problems. Most notably, Mr. Brosch does not identify where within AIC’s formula rate schedules, appendices, and workpapers the reduction to rate base for reconciliation ADIT calculation might take place. AIC considers this is a crucial omission. As described by AIC witness Blessing, the AG’s proposal would create an unending loop of calculations. AIC explains that first, one would calculate the reconciliation balance, then apply the tax rate to the balance to determine the reconciliation-related ADIT. Next, the reconciliation ADIT would be deducted from the reconciliation year rate base. But changing the reconciliation rate base would change the amount of the reconciliation balance, and because the ADIT is a product of the reconciliation balance, the amount of ADIT to be deducted from the reconciliation rate base would change as well. AIC contends that Mr. Brosch utterly fails to address how to escape the “chicken and egg” problem that arises under his proposal because the ADIT and the reconciliation balance mutually inform one another. In interpreting statutes, it is “presume[d] that when the legislature enacted a law, it did not intend to produce absurd, inconvenient or unjust results.” <u>Brucker v. Mercola</u>, 227 Ill. 2d 502 (2007). AIC states that the Commission should not apply the EIMA to require the absurd results described immediately above.

AIC also maintains that the Commission must consider how it could accept the AG’s theory without also requiring at least a $6 million increase in rate base. Adopting the AG’s alternative proposal, AIC explains, would suggest that there is in fact no need for consistent treatment of rate base items and the related tax items. A cost item could be excluded from rate base, while the related tax item is included in rate base. In AIC's view, adopting the AG’s alternative proposal would thus require the Commission to revisit the parties’ agreement to remove certain deferred tax assets from rate base, because the related costs are not included in rate base. The total dollar value of these items is approximately $6 million.

b. AG Position

The AG states that the statute creating the formula rate process is clear: the formula must “[p]rovide for the recovery of the utility’s actual costs of delivery services that are prudently incurred and reasonable in amount consistent with Commission practice and law.” (220 ILCS 5/16-108.5(c)(1)) The statute further requires the formula to provide for an annual reconciliation of the revenue requirement established for a calendar year and the subsequently determined "actual" revenue requirement for that year. (220 ILCS 5/16-108.5(c)(6) and (d)(1)) The statute provides that the reconciliation shall be recovered or refunded "with interest calculated at a rate equal to the utility's [WACC] approved by the Commission for the prior rate year." (Id.) Consistent with the overall purpose of the statute to enable the utility to recover its actual costs, the AG relates that the interest charge is intended to compensate the utility for the time value of money for the period of time it must finance the reconciliation balance. The AG understands that the statutory goal is to match the interest expense the utility is expected to incur for the period the reconciliation balance is pending (i.e. equal to its WACC) to the interest expense added to the reconciliation balance.

Both AG witnesses Effron and Brosch testify that applying the statutory interest rate to amounts that the utility will actually have to finance during the reconciliation period is the most accurate way to reflect the utility's actual cost. Stated differently, interest should be applied to only the net cash flow that was foregone by the utility while awaiting recovery of the reconciled revenue requirement. (See AG Ex. 1.0 at 10-11 and AG Ex. 2.0 at 10-12) This argument is presented in more detail below.

As an alternative to this primary recommendation and in light of the Interim Order in Docket Nos. 13-0501/0517 (Cons.) in which the Commission declined to adopt this recommendation, AG witness Brosch recommends that the Commission include the ADIT associated with the reconciliation balance in the total ADIT it deducts from rate base. It is well established that "ratepayers typically provide the utility with more tax-related revenue than the utility pays out, and the utility retains this revenue as . . . ADIT." (AG Ex. 1.0 at 13) Ordinary ratemaking recognizes that ADIT balances represent a significant source of zero-cost capital to the utility and that these balances must be deducted from rate base. (Id. at 14) As the Appellate Court stated in its review of AIC's 2012 formula rate request:

> ¶ 39 The Modernization Act expressly prohibits a utility from recovering above and beyond what would normally be recoverable in a ratemaking case. 220 ILCS 5/16-108.5(c)(6) (West 2012); see also <u>Commonwealth Edison Co.</u>, 405 Ill. App. 3d at 405, 937 N.E.2d at 703 (The Utilities Act "requires the Commission to ensure that a utility's approved rate base does not exceed the investment value that the utility actually uses to provide service."). The Commission asserts that ignoring the ADIT figure would do just that—allow Ameren to recover an unjust and unreasonable rate base that has been inflated by no-cost capital for the benefit of Ameren. We agree. Omitting ADIT from the rate base calculation would allow Ameren what amounts to an interest-free loan at the ratepayers' expense that would artificially increase Ameren's rates until the next reconciliation process, a result which is neither just nor reasonable for ratepayers. As Ameren noted, the reconciliation process will allow Ameren to recover its actual costs of the forecasted ADIT for projected plant additions in the event of a miscalculation during the ratemaking process.

> ¶ 40 As it was consistent with the common practice of the Commission to include ADIT in the ratemaking process, we conclude the Commission did not err by including the ADIT adjustment for projected plan additions in its ratemaking calculation. (Ameren Illinois Co. v. Illinois Commerce Commission, 2013 IL App (4th) 121008, 2 N.E.3d 1087, 377 Ill.Dec. 806 ("Ameren v. ICC"), modified upon denial of rehearing (Jan. 28, 2014))

While the court was addressing the treatment of ADIT related to projected plant additions, the AG asserts that the same principle applies here and is consistent with Commission standard practice to reduce rate base by the ADIT balances, so as to properly quantify the net amount of investor-supplied capital to support rate base assets.

The AG states that the evidence is unequivocal that AIC recognizes $527,000 of ADIT related to the reconciliation balance. This balance recognizes AIC's actual ADIT balance and includes (1) the December 31, 2012 balance; (2) the adjustment to that balance as a result of the Order in Docket No. 13-0301; and (3) the December 31, 2013 balance. If the Commission adjusts the reconciliation balance and the associated ADITs in this docket, the AG contends that that change can be incorporated in the 2014 ADIT balance, just as the Docket No. 13-0301 effect is incorporated into this year's ADIT balance.

Should the Commission decline to apply interest to the net-of-tax reconciliation balance as Mr. Effron recommends and as discussed below, the AG maintains that the Commission should treat the reconciliation related ADIT the same way it treats other delivery services related ADIT. Because AIC had a sizable over-collection last year resulting in a credit to consumers, the net ADIT balance in this docket results in a $527,000 increase to rate base. Nevertheless, the AG believes that this treatment is necessary to fairly and accurately reflect the actual tax effect of the reconciliation process required by Section 16-108.5(d) in the event that the Commission declines to limit the application of interest to the net-of-tax reconciliation balance.

In response to AG witness Brosch's alternative recommendation to include the $527,000 ADIT related to the reconciliation balance as a deduction to rate base, AIC argued that this amount is not jurisdictional. The AG responds that this argument can not be squared with the fact that the revenues associated with these deferred taxes are delivery service reconciliation revenues and that "[t]here is no dispute that reconciliation-related ADIT balances exist." (AG Ex. 3.0 at 7) These deferred taxes do not relate to transmission or non-regulated revenues or services. The AG reiterates that failure to include them in the distribution service rate base (ADIT deduction) is unfair because it will result in consumers paying a return on non-investor money.

AIC argues that the reconciliation related ADIT should not be treated as jurisdictional despite its relation to delivery service because the associated reconciliation balance is not included in rate base. The AG encourages the

Commission to resist AIC's request to put form over substance. Section 16-108.5 specifically defined the way the reconciliation balance is treated. The law requires that the reconciliation under-collection be recovered in a single rate year, beginning one year after the close of the reconciliation year (costs as of December 31, 2013 recovered beginning January 1, 2015). (See 220 ILCS 5/16-108.5(d)) Rather than being recovered as a regulatory asset that is included in rate base and receives a rate base return, the statute specifies that the reconciliation under- (or over-) collection be subject to an interest rate equal to the WACC. (Id. at 5/16-108.5(d)(1)) By specifying that the reconciliation under-authorization is subject to interest, rather than a rate base return, the AG states that the statute creates certain requirements that must be accommodated while at the same time applying the established regulatory and legal standards as required by Section 16-108.5(c) and (d)(3) ("The Commission shall apply the same evidentiary standards, including, but not limited to, those concerning prudence and reasonableness of costs incurred by the utility, in the hearing as it would apply in a hearing to review a filing for a general increase in rates under Article IX of the Act").

The AG asserts that it is well-established that ADIT represents non-investor capital. Also without question, the AG continues, is that AIC has recorded $527,000 in deferred taxes arising from its right to receive the reconciliation revenues in the future. The question then becomes whether the Commission has the power to protect consumers given the fact that AIC has $527,000 in deferred tax benefits associated solely with the reconciliation recovery despite the fact that consumers pay a statutorily mandated interest rate on the reconciliation balance that is equal to AIC's return on rate base rather than paying that same return on a regulatory asset included in rate base. As Mr. Brosch explains:

> ratepayers are obligated to provide a WACC-based interest return on the reconciliation balance. Because of the EIMA requirement to apply interest to the reconciliation balance, including the same regulatory asset (or liability) balance in rate base would result in double counting, through which AIC would earn a return on its investment in the reconciliation balance twice: once through WACC-based interest and again through rate base inclusion of the regulatory asset/liability. The simple truth is that ratepayers are paying AIC interest at a rate equal to its WACC on the reconciliation balance and, therefore, the related ADIT amounts should be also treated as ICC-jurisdictional. (AG Ex. 3.0 at 9-10)

The Commission has the authority to, and the record clearly supports, including the reconciliation-related ADIT in rate base despite the fact that the reconciliation balance is collected subject to an interest rate that mirrors AIC's rate base return, rather than being treated as a regulatory asset in rate base.

c. Commission Conclusion

The Commission will address the AG's preferred adjustment below in the discussion of the calculation of interest on the reconciliation balance. While the

Commission understands the AG's interest in making its alternative proposal concerning rate base treatment of ADIT associated with the reconciliation balance, the Commission is not persuaded that such treatment is appropriate regardless of the conclusion below related to the calculation of interest on the reconciliation balance. All parties appear to agree that the reconciliation balance can not be in rate base. The parties also appear to agree that it is not uncommon to make adjustments related to ADIT when calculating rate base. When such ADIT adjustments are made, however, the ADIT has a connection with an underlying rate base asset. With the issue at hand, the ADIT serving as the basis for the AG's proposed adjustment has no connection with a rate base asset. Stated another way, because the reconciliation balance can not be in rate base, it would not be appropriate to include the reconciliation ADIT in rate base. Accordingly, the Commission declines to adopt the AG's position on this issue.

C. Original Cost Determination

AIC requests that the Commission approve an original cost of electric plant in service as of December 31, 2013, before adjustments for projected plant additions, of $5,481,627,000. Staff recommends that the Commission approve AIC’s request for an original cost finding. Staff further recommends that if the Commission makes any adjustments to plant, those adjustments should also be reflected in the original cost determination. AIC and Staff both suggest the following form of language in the Findings and Orderings paragraphs in this proceeding:

> (x) the Commission, based on AIC’s proposed original cost of plant in service as of December 31, 2013, before adjustments, of $5,481,627,000 and reflecting the Commission’s determination adjusting that figure, unconditionally approves $5,481,627,000 as the composite original jurisdictional distribution services plant in service as of December 31, 2013.

The Commission finds that the original cost determination of electric plant in service, before adjustments for projected plant additions, is uncontested; therefore, it will be set at $5,234,063,000, and the requested language will be included in the Finding and Ordering paragraphs of this Order.

D. Rate Base

1. Filing Year

The Commission finds, based on the decisions presented earlier on the various contested and uncontested issues; that an appropriate rate base for the filing year is shown on Schedule FR A-1.

2. Reconciliation Year

The Commission finds, based on the decisions presented earlier on the various contested and uncontested issues; that an appropriate rate base for the reconciliation year is shown on Schedule FR A-1 REC.

VI. OPERATING EXPENSES AND REVENUES

A. Uncontested Issues

1. Distribution Expense

AIC's revenue requirement includes distribution operations and maintenance expense. The distribution operating expenses increased in 2013 by approximately 8% over 2012. AIC witness Pate, groups the expense into five categories: supervision and engineering, dispatch, station, line, and miscellaneous expense, and describes the factors that drove increased expenses in each category. Mr. Pate further testifies that the levels of operations and maintenance expense reflected in the revenue requirement were prudent and reasonable. No party contests Mr. Pate's conclusion. The Commission finds this outcome reasonable and adopts it.

2. Customer Expense (Except for VI.B.1)

AIC's Customer Expense includes labor and costs related to performing customer support activities, including meter reading, maintaining customer records, payment processing, customer billing, uncollectibles, customer service, informational assistance to customers, and energy efficiency. AIC witness Getz, testifies that the Customer Expenses included in AIC's formula rate revenue requirement were prudent and reasonable. No party contests this conclusion. The Commission finds this outcome reasonable and adopts it.

3. Administrative and General Expenses

AIC's Administrative and General Expenses include costs for corporate and indirect expenses that are not chargeable to a particular operating function, such as corporate leadership, financial services, human resources, information technology, legal expense, salaries and pensions, property insurance, regulatory expenses, and rents. The Company states that these services are provided by AIC employees, external contractors, and AMS under the terms of the General Service Agreement. It explains that when AMS provides a service, the cost is allocated to AIC in accordance with approved allocation factors. AIC witness, Getz, testifies that the Administrative and General Expenses included in AIC's formula rate revenue requirement were prudent and reasonable. No party contests Mr. Getz's conclusion, or proposed adjustments to the level of expenses. The Commission finds this outcome reasonable and adopts it.

4. Depreciation and Amortization Expense

AIC's revenue requirement includes depreciation and amortization expense. A portion of AIC's depreciation expense is related to 2014 projected plant additions, net of projected retirements. No party contests the manner in which the depreciation and amortization expense was calculated, or the totals included in the revenue requirement. The Commission finds this outcome reasonable and adopts it.

5. Taxes Other Than Income

AIC's revenue requirement includes expenses for taxes other than income taxes. No party contests the manner in which the expense for taxes other than income taxes was calculated, or the total included in the revenue requirement. The Commission finds this outcome reasonable and adopts it.

6. Regulatory Asset Amortization

AIC's revenue requirement includes amortized levels of regulatory expense incurred in 2013 in connection with Docket Nos. 12-0001, 12-0293, and 13-0301. In addition, AIC continues to amortize costs previously authorized by the Commission and recorded as regulatory assets or deferred debits. No party contests the manner in which these amounts were calculated, or the total included in the revenue requirement. The Commission finds this outcome reasonable and adopts it.

7. Formula Rate Case Expense

AIC offers testimonial and documentary evidence in support of its rate case expenses. The Company and Staff resolved all issues related to rate case expense and AIC requests total rate case expenses of $1,906,000. That amount includes an $873,000 amortized level of expense associated with Docket No. 12-0001, a portion of which was incurred in 2013 and a portion of which was incurred in 2011 and 2012 and reviewed and approved by the Commission in AIC's 2013 update case, Docket No. 13-0301. The amount also includes $64,000 incurred in 2013 related to AIC's 2012 formula rate update case, Docket No. 12-0293, and $969,000 incurred in 2013 related to Docket No. 13-0301. AIC and Staff agree that all of these rate case expenses are just and reasonable. Staff and AIC recommend particular language concerning the Commission's findings on this issue.

The Commission has considered the costs expended by AIC to compensate attorneys and technical experts to prepare and litigate rate case proceedings, and assesses that the amount included as rate case expense in the revenue requirements of $1,906,000 is just and reasonable pursuant to Section 9-229 of the Act. This amount includes the following costs: (1) $873,000 amortized rate case expenses associated with the initial formula rate proceeding, Docket No. 12-0001, a portion of which are charges for Docket No. 12-0001 incurred in 2013; (2) $64,000 associated with Docket No. 12-0293; and (3) $969,000 associated with Docket No. 13-0301. The Commission also finds that the unamortized balance of charges for Docket No. 12-0001 incurred in 2013 to be recovered in the 2014 revenue requirements are supported by the record in this case and are just and reasonable.

8. Industry Association Dues

Staff witness Tolsdorf proposed adjustments to Industry Association Dues, on the basis that the dues were for legal fees that were not related to delivery service or were out-of-period expenses or. AIC accepts Mr. Tolsdorf's proposal to disallow legal fees paid in connection with AIC's membership in the Utilities Water Act Group, which he argued were not related to delivery service. In order to limit the number of contested issues, AIC accepts two adjustments to remove expenses Mr. Tolsdorf asserted were for out-of-period expenses; AIC reserves the right to contest similar adjustments in future proceedings if the dues for the applicable year could not be recovered in that year. Mr. Tolsdorf withdrew other out-of-period adjustments to which AIC objected on the bases that they did not meet its materiality level, could not be recovered in any year other than 2013, and were not imprudent, unreasonable, or unrelated to delivery services. The Commission finds the resulting Industry Association Dues reasonable and adopts it.

9. Adjustment to Blended Tax Rate – Ameren Exhibit 13.4

In rebuttal testimony, AIC witness Stafford updated the blended tax rate calculation, which is used to reduce income tax expense in the revenue requirement. Mr. Stafford indicates that the blended rate included in his direct testimony did not properly reflect the final as-filed jurisdictional allocators. In addition, the blended rate was updated to reflect the exclusion of ADIT balance related to merger initiatives. No party contests these adjustments. The Commission finds the adjustments reasonable and adopts them.

10. Additional Company Adjustments to Operating Expense

AIC asserts that as a result of a review of 2013 credit card expenses, similar to the Staff review in Docket No. 13-0301, it is self-disallowing a total of $96,008 of Corporate Credit Card Expenses and Other Purchases. AIC's self-disallowances is intended to reasonably approximate the disallowances recommended by Staff in Docket No. 13-0301, as a result of its review. No party contests AIC's review methodology, or the amount of its self-disallowance.

In his direct testimony, Mr. Stafford reduced operating expenses and increased rate base for storm costs incurred in excess of $3.7 million for a single storm event, in accordance with Section 16-108.5 of the Act. The Company accepts Staff witness Tolsdorf's recommendation to identify storm costs greater than $3.7 million separately on App 7 in future formula rate filings. The Company proposes other expense adjustments, including adjustments to the amount of franchise expense, injuries and damages, adjustments to remove costs recovered through other riders, costs associated with the NESC Rework, incentive compensation costs based on earnings per share goals and the costs of the Performance Share Unit Program, and lobbying expenses, and an adjustment for company use of fuel. AIC also proposes an adjustment to include charitable contribution expense, which was further supported by testimony. (See generally, Ameren Ex. 6.0.) In addition, the Company proposed other ratemaking adjustments identified on App. 7, line 16 and Schedule C-2.16 to remove certain vendor costs. No party contests these adjustments. The Commission finds the adjustments reasonable and adopts them.

11. Miscellaneous Operating Revenues

In his direct testimony, AG witness Brosch, proposed an adjustment to Miscellaneous Operating Revenue. In his rebuttal testimony, Mr. Brosch withdrew the adjustment based on additional information provided in AIC's testimony and in response to data requests. As a result, AIC's miscellaneous operating revenues are uncontested. The Commission finds that this proposed adjustment is uncontested, is appropriate, and it will be adopted for the purposes of this proceeding.

B. Contested Advertising Expense (Focus Forward - Manage Energy Use)

In reviewing Ameren's FERC Form 1 cost inputs under formula rates, the Commission retains under Section 16-108.5(d) its authority and obligation to review costs to determine if they are prudent and reasonable. The Commission has the authority to disallow costs that are unnecessary to the provision of utility service, or that the utility has not justified in amount. The Act includes special treatment for advertising costs and specifically defines "advertising" as follows:

> "Advertising" means the commercial use, by an electric, gas, water, or sewer utility, of any media, including newspapers, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to such utility's consumers; (Section 9-225(1)(a))

Advertising is further divided among "political," "promotional," and "goodwill or institutional" advertising, each specifically defined by the statute. The Act directs the Commission not to consider "expenditures for promotional, political, institutional or goodwill advertising, unless the Commission finds the advertising to be in the best interest of the Consumer" or certain conditions specified in the statute are met. The statute describes eight allowable categories. It also provides that "other" categories may be allowed provided they are not political, promotional, or goodwill. In reviewing public relations and advertising expenses, the Commission applies the definitions and requirements of Section 9-225.

1. AG Position

The AG recommends disallowance of the Company's advertising expenses associated with the "Focus Forward – Manage Energy Use" ("Focus Forward") campaign. It asserts that the advertisements are for the primary purpose of promoting corporate goodwill and enhancing AIC's public image. It states the Focus Forward advertisements contain no specific informational content that advises ratepayers of specific actions that can be taken with new technologies to either reduce outages or to manage energy use so as to save money. The AG concludes the expenses are not reasonable or necessary for the provision of utility services by AIC and should be excluded in setting rates. Therefore, it recommends the $274,468 expenses related to the Focus Forward advertisements should be disallowed.

The AG observes that the Commission disallowed AIC's Focus Forward campaign expenses in the Company's prior formula rate cases. It notes the Commission's consideration of necessity:

> A media buy extolling the virtues of AIC's distribution system is obviously related to delivery services, but is clearly not appropriate for cost recovery from customers since there is no need to advertise AIC's distribution system because customers have no choice for energy delivery. If an expense is necessary, however, the outcome may be different. Advertising informing customers what telephone number to call before digging near buried electric lines or how to take advantage of energy efficiency offerings is related to delivery services and necessary for safety reasons in the former example and to comply with statutorily mandated efficiency goals in the latter example. To disregard the necessity of an expense contradicts longstanding Commission practice and deep rooted protections in the Act. Order, Docket No. 13-0301, December 9, 2013, at 91.

It also references the Commission's earlier conclusion:

> AIC and Ameren are free to undertake efforts to improve their image and brand, but they may not recover the costs of doing so from regulated AIC delivery service customers. Order, Docket No. 12-0293, December 5, 2012, at 64.

According to AG witness Brosch, a review of the advertisements combined with a review of Section 9-225 demonstrates that the Focus Forward advertisements are image advertisements that are not recoverable under Illinois law. He provides excerpts from the advertisements and describes them as very general statements about energy. Mr. Brosch explains that while the advertisements assert that Ameren "is adding new technologies to detect and reduce outages, and options to help you manage your energy use and save money" (AG Ex. 1.7at 6-10), no information about actual outages or how to manage energy use is included. He finds that the advertisements leave the impression that consumers need not worry about these matters, suggesting that Ameren is making these investments "so you can focus your energy on things that really matter to you" (Id.). The AG notes that the only information provided is an invitation to visit Ameren's website to take control.

The AG concludes that advertising of this type is consistent with the statutory definition of goodwill or institutional advertising, defined by the statute as "advertising either on a local or national basis designed primarily to bring the utility's name before the general public in such a way as to improve the image of the utility or to promote controversial issues for the utility or the industry." 220 ILCS 5/9-225(1)(d). It observes that the advertisements do not contain any information that consumers can actually use to control their energy usage or bills. The AG asserts that Section 9-225(e) of the Act only allows recovery of advertising that informs consumers about how to conserve energy, energy efficiency, existing or proposed rate structures, where utility offices are located or how to shift demand from the peak usage period. The AG asserts that none of these functions is served by the advertising its witness has identified. Rather, they simply inform consumers that Ameren is adding new technology "to help you manage your energy use and save money," leaving the function of the new technology unstated. Therefore, $274,468 in expenses related to these advertisements are not recoverable in rates.

In its Reply Brief, the AG says the crucial dispute is whether the advertisements at issue, were primarily to enhance AIC's public image, or to educate or inform customers on system improvements or to allow them to better control and conserve their usage. The AG responds to the Company's explanation that its advertisements direct viewers to visit the Ameren website because ,identifying the details of every investment project, every potential customer benefit from the infrastructure improvements, and every potential customer action that could be taken to manage energy use would be impossibly information-dense. The AG points out that AIC did not provide evidence as to what information may be available at the website that would meet the Section 9-225(3) criteria. The AG suggests that it is not clear from Mr. Kennedy's conclusory statements in testimony that available information on AmerenIllinois.com does in fact inform customers how to conserve energy and reduce peak demand (Section 9-225(3)(a)) or discuss service interruptions and safety measures (Section 9-225(3(c)) or promote the use of energy efficient appliances, equipment or services (Section 9-225(3)(e)), as he provided no excerpts from available content on the website itself. Moreover, the AG notes that nowhere in Mr. Kennedy's rebuttal testimony statements was it indicated that the website might concern off-peak usage (Section 9-225(3)(h)). Finally, the AG asserts that the adjustment in Docket No. 13-0301 referenced by the Company was withdrawn making it difficult to draw any inferences from that example.

2. AIC Position

AIC maintains that its advertising is focused on educating and informing customers about the delivery system, including investments that will be implemented to maintain and improve safety and reliability, and about benefits and programs that are available to customers. It states the Focus Forward fees were spent on the purchase of 30-second television and radio spots and 15-second digital spots. The Company explains the advertisements were intended to alert customers to upgrades and technology that AIC is installing under EIMA, and to direct them to the AIC website to find out more details about the specific projects.

AIC asserts that Section 9-225(2)-(3) of the Act expressly authorizes utilities to recover the cost of advertising in rates, unless the advertising is designed to be promotional, political, institutional, or goodwill and also is not in the best interest of the customer. It explains the $274,468 advertising expenses in dispute were incurred by the Focus Forward campaign to deliver reliable and accurate information on improvements that are and will be occurring to AIC’s electric systems and how they will impact customer service and usage. The Company states that ninety percent of the disputed fees were spent on the purchase of 30-second television and radio spots and 15-second digital spots ($150,000), and on time and expenses to develop and produce the ads in question ($96,000). The remaining 10 percent of the disputed amounts were miscellaneous expenses for fees for the development of a new design for the AIC YouTube channel ($20,386) and a new template for customer newsletter ($8,081).

The Company asserts there is no evidence supporting the AG's subjective claim that the primary purpose of the Focus Forward campaign was to enhance the Ameren Corporation's public image. It says that the expenses in dispute were incurred to create messages that educate and inform customers on system improvements that will make their service safer and more reliable, or allow them to better control and conserve their usage. The Company states the messages fall squarely within categories of allowable advertising expenses. According to the Company, its research and interactions with consumers and other stakeholders demonstrate that customers want to know what capital improvements AIC is making with ratepayer supplied funds, and how those improvements will impact their lives. The Company argues that for these reasons, and based on the substantial evidence presented, the Commission should reject the AG’s adjustment.

AIC recounts that Section 16-108.5(b) or EIMA requires it to make $625 million in incremental capital expenditures over a 10-year period. It says the planning for and implementation of the incremental investments has been a significant initiative. It points to the approval of and updates of its Advanced Metering Infrastructure ("AMI") Plan. It indicates that by the end of 2014, it will have placed $133.8 million in incremental plant additions in service

AIC explains that its advertising is focused on educating and informing customers about the delivery system, including investments that will be implemented to maintain and improve safety and reliability, and about benefits and programs that are available to customers. The Company firmly believes in the importance of sharing this information with customers. It states that its research indicates that customers want to know how rate dollars are spent to improve service. It submitted a qualitative analysis of customer insights on reliability, service, and future energy needs and states that it showed that customers want to know more about how AIC is investing in its systems for the future and what improvements will be financed with future rate increases. According to the Company, customers want information in a high-level, easily digestible form with direction to get additional information (when desired). It says they want to know the specific upgrades that will happen in their city, sub-division, or block and how much those upgrades will cost. AIC indicates that other stakeholders, such as CUB, have also demonstrated their interest in learning more about the electric grid modernization and AMI by touring the AIC Technical Application Center in Champaign, as well as the AIC "smart meter" lab in Collinsville. It states they consider it important to be informed about what is going on behind the scenes to develop new applications for customers to benefit from smart grid deployment.

AIC points out that Section 9-225(3) of the Act identifies a number of categories of advertising that are allowable operating expenses for electric utilities. It lists conserving energy, reducing peak demand, announcing service interruptions and safety measures, promoting the use of energy efficient appliances, equipment or services, promoting shifting demand from peak to off-peak hours, encouraging off-peak usage of service, as well as others as categories that are allowable expenses.

The Company asserts that the 2013 Focus Forward advertising was not designed, planned, and implemented to praise or promote AIC as an energy provider. It says that the purpose of the advertising was to educate and inform customers about the system upgrades that AIC is undertaking and how they will impact service. It explains that certain incremental EIMA investments, such as AMI or smart meters are intended to provide customers with more information about—and greater control over—their energy usage. Other incremental EIMA investments are intended to upgrade the electric distribution grid to improve reliability and reduce outages and response time to outages. AIC asserts that external messages on these subjects allow customers and other stakeholders to become more familiar with the full range of capital improvements and benefits that will flow from AIC's participation in EIMA. The Company maintains that these are the types of messages that are considered allowable operating expenses under the Act, and prudent and reasonable expenses to recover through formula rates.

The Company argues that in its last update proceeding, Staff withdrew a similar adjustment to remove outside agency fees for labor and expenses related to communications designed to educate and inform customers about AIC's EIMA investments. Ameren Ill. Co., Docket No. 13-0301, Order at 41 (Dec. 9, 2013). AIC states in that update proceeding it explained that the communications informed customers how AIC would be investing ratepayer funds, and how the incremental capital investments would result in improved service. It states the Commission ultimately approved the recovery of those expenses in Docket No. 13-0301, and likewise, it should approve recovery of the disputed expenses here.

The Company rejects the AG's argument that the Focused Forward project was mostly about favorable public image and reputation building. It says that claim is subjective and states the AG has not pointed to any evidence that supports that claim. AIC states that the purpose of the 15-second and 30-second broadcasted advertisements was: (i) to inform customers that AIC is making investments in a smarter and more reliable grid, with new technologies to detect and reduce outages and help customers manage energy use, and (ii) to direct customers to the AIC website for more information about specific improvements. The Company states this factual information allows customers to be better informed as to the nature and extent of the upgrades about which customers and other stakeholders have said that they want to know more. AIC maintains that the messages are designed to address the point of the view of the customer, not crafted to enhance the image of the Company.

AIC counters the AG's argument that the advertisements for not having specific information or advising ratepayers of specific actions that can be taken with new technologies to reduce outage or to manage energy use. It says that embedded in the AG's complaint is the mistaken assumption that allowable advertising has to direct the end user to take some action, rather than just simply be informative and educational. The Company states the Act does not contain such a requirement.

More importantly, AIC argues, the AG complaint misses the point of the 15-second and 30-second spots. It states, the point of the advertisements was not to identify the details of every investment project, every potential customer benefit from the infrastructure improvements, and every potential customer action that could be taken to manage energy use. It explains that level of detail could not possibly be communicated in a 15-second or 30-second spot. It adds that including that level of detail would not be an effective way to capture and then hold viewers' attention. The Company finds it conceivable that it could produce and broadcast annually a 30- or 60-minute infomercial that describes each incremental investment in the coming year and the expected customer benefits, but it concludes that that type of advertising would not be a practical or cost-effective way to reach, inform, and educate the AIC customer base. It states that is why the advertising directs viewers to go to the AIC website to find out more details about the specific projects — what they are, where they are happening, what they cost, and what benefits they will bring. AIC asserts that in today's digital age, information is available electronically at the viewers' convenience. It says it can supplement broadcasted communications by directing customers to the online resources that contain more detailed and easily accessible information. The Company asserts that in that regard, the advertising in question provides customers with actionable information; it alerts them to the EIMA investments and encourages them to seek out additional information on the AIC website.

The Company says that the AG's criticism that the advertising does not provide an opportunity for the public to become involved or provide any input on investments to upgrade energy delivery systems in Illinois misses the primary purpose of the 15-second digital spots and the 30-second television and radio spots. It contrasts them with mailings or social media, saying these advertisements were not principally designed to solicit direct customer feedback on particular projects. AIC explains they were designed to assist customers in becoming more familiar with the projects and to direct them to where they can find more information about them, if they so choose. AIC asserts there is a need for the Company to educate and inform customers on EIMA projects. It says being committed to make incremental investments does not inform customers on either the specific investments that AIC will make, or how those investments will benefit them. The Company asserts that like anyone paying for a service, the customer deserves to know how the capital collected through rates is spent.

AIC argues that in Docket No. 13-0301, the Commission approved the recovery of 2012 expenses that paid for advertising related to AIC's planned incremental EIMA investments and the substantial evidence in this record continues to support the recovery of similar 2013 expenses. The Company asserts that it remains an important, prudent and allowable expense for AIC to educate and inform its customer base and other stakeholders about its progress in implementing incremental EIMA projects. It maintains that the Commission should reject the AG's proposed adjustment to disallow this expense.

In its Reply Brief, the Company emphasizes that it considers the necessity of expenses when it budgets and executes advertising initiatives and again when it requests recovery of them. AIC denies that the advertising adjustment in Docket No. 13-0301 included any Focus Forward expenses. It states that the Order expressly approved EIMA-related advertising expenses. The Company reiterates that there is nothing in the record to support the AG's claim that the advertisements are efforts to improve AIC's image and brand. It maintains that the advertisements are focused on educating and informing the customers about the delivery system, including the investments and initiatives that we plan to implement to maintain and improve safety and reliability, and the benefits and programs that are available to customers. AIC says it focuses of the most cost-effective and efficient means to reach and educate the customer base and the advertisements are crafted to be informative and customer-centric, not positioned to promote the image of AIC. The Company finds the AG's criticism that the advertisements do not contain information about actual outages or how to manage energy use, to be a red herring. It asserts that the advertisements provide customers with specific direction, that it alerts them to the EIMA investments and encourages them to seek out additional information on the AIC website. The Company complains that the AG's description of the allowable advertising under the Act is woefully incomplete, saying it ignores the fact that the statutory list is neither exhaustive nor exclusive and pointing out that the Act allows recovery of "other" categories of advertising, provided they are not political, promotional or goodwill. AIC asserts that it remains an important, prudent and allowable expense for it to educate and inform its customer base and other stakeholders about its progress in implementing incremental EIMA projects.

3. Commission Conclusion

The AG objects to AIC's recovery of the $274,468 expenses associated with the Focus Forward television and radio advertising campaign. The AG states the advertisements contained no specific information that advises ratepayers of specific actions that can be taken with new technologies to either reduce outages or to manage energy use. It opines that the advertisements are primarily for the purpose of enhancing AIC's public image. AIC asserts the purpose of the advertisements was to inform customers about its smart grid investments and new technologies to detect and reduce outages and to help customers manage energy use, and to direct customers to the AIC website where detailed, accessible information is available at the viewers' convenience.

On one level, the Commission finds the strategy described by AIC compelling. It is true that details about AIC's investment in the smart grid and new technology can be efficiently disseminated by making them available on the Company's website. Using an advertisement to provide information to generate interest in AIC's investments and their benefits in order to direct them to its online resources for specific, detailed information could be appropriate. Generally, it can be effective and efficient to make detailed information available on the internet.

However, the Commission finds that the content of the advertisements, rather than informing or educating the public about AIC's system upgrades and how they will impact service, is consistent with the goal of improving AIC's image. The information provided in the Focus Forward advertisements does not direct attention to particular investments or types of benefits so as to generate interest in the details and motivate the public to visit the Company's website to get specific, detailed information. The Commission concurs with the AG's assessment that the advertisements leave the impression that consumers need not worry about these matters, suggesting that AIC is making these investments "so you can focus your energy on things that really matter to you." Without more, the statement "[l]earn how you can take control at AmerenIllinois.com" is insufficient to render the advertisements educational so as to be recoverable in rates. The Commission finds the Focus Forward advertisements are goodwill advertisements. The related expenditures of $274,468 are disallowed.

VII. COST OF CAPITAL AND RATE OF RETURN

Only the Company and Staff presented evidence on the rate of return on rate base. Staff and the Company both recommend an 8.075% rate of return on rate base for 2015 rate setting and an 8.075% rate of return on rate base for 2013 reconciliation for AIC's electric delivery services, based on the following capital structure and capital costs:

Filing Year

Component	Weight	Cost	Weighted Cost
Short-Term Debt	0.000%	0.000%	0.000%
Long-Term Debt	47.405%	6.796%	3.222%
Preferred Stock	1.595%	4.979%	0.079%
Common Equity	51.000%	9.247%	4.716%
Bank Facility Costs			0.058%
Total Capital	100.000%		8.075%

Reconciliation Year

Component	Weight	Cost	Cost
Short-Term Debt	0.000%	0.000%	0.000%
Long-Term Debt	47.405%	6.796%	3.222%
Preferred Stock	1.595%	4.979%	0.079%
Common Equity	51.000%	9.247%	4.716%
Bank Facility Costs			0.058%
Total Capital	100.000%		8.075%

(Staff Ex. 3.0, 3; Ameren Ex. 2.1, Schedule FR D-1). The Commission finds that this proposal is uncontested, is appropriate, and it will be adopted for the purposes of this proceeding.

VIII. RECONCILIATION BALANCE INTEREST CALCULATION

The annual reconciliation is a component of the formula ratemaking mechanism meant to ensure that the utility recovers its actual costs for a given year. No party disputes the method of calculating the reconciliation balance under the EIMA. Rather, the dispute focuses on the calculation of interest applied to that balance. To compensate the utility or ratepayers for the delay in receiving reconciled over or under collections, the EIMA provides for interest on the balance "calculated at a rate equal to the utility's weighted average cost of capital." (220 ILCS 5/16-108.5(c)(6)) Section 16-108.5(d)(1) sets forth the mechanics of the reconciliation charge with interest as follows:

> Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's

weighted average cost of capital approved by the Commission for the prior rate year, the charges for the applicable rate year.

The primary proposal offered by CUB, IIEC, and the AG regarding reconciliation interest is that the Commission should reduce the reconciliation balance by the amount of taxes, and then apply the WACC interest rate only to the net of tax balance. AIC contends that this proposal improperly adds terms to the calculation of reconciliation interest that are not specified in the statute. The Commission recently considered the intervenors' proposal in Docket No. 13-0553 and Docket Nos. 13-0501/13-0517 (Cons.), but did not adopt it.

A. AIC Position

AIC is adamant that the EIMA reconciliation provision does not contain any term for an adjustment to the calculation for taxes. Had the legislature intended for such, AIC believes it would have made its intent clear as it has elsewhere in the EIMA. In the absence of such clear intent, AIC maintains that the Commission lacks discretion to implement the intervenors' proposal.

To demonstrate its point, AIC notes that in the return on equity ("ROE") collar calculation, the utility is required to apply a credit or charge that “reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points higher [or lower] than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c) . . . for the prior rate year, adjusted for taxes.” (220 ILCS 5/16-108.5(c)(5)) Similarly, for pension assets, AIC observes that the EIMA provides for a return at a rate “equal to the utility’s weighted average cost of long-term debt, . . . net of deferred tax benefits.” (220 ILCS 5/16-108.5(c)(4)(D)) Thus, AIC concludes that it is clear the legislature was generally aware of the possibility of adjusting given items to account for tax effects.

But with regard to the reconciliation balance, AIC states that no mention is made of netting or adjusting this balance for taxes, and no party has shown that this legislative instruction can not be carried out as written, such that some addition or adjustment is needed to implement it. As a matter of statutory construction, where the legislature includes particular language or terms in one section of a statute but omits it in another, it is generally presumed the legislature acts intentionally and purposely in the inclusion or exclusion of the different terms. (See <u>In re J.L.</u>, 236 Ill. 2d 329, 341 (2010); see also <u>Bridgestone/Firestone, Inc. v. Aldridge</u>, 179 Ill. 2d 141, 154-55 (1997) (“A court may not inject provisions not found in the statute, however desirable they may appear to be.”)) Because the legislature did not include a provision for adjusting the reconciliation interest calculation for taxes, but did include such tax-adjustment provisions elsewhere, AIC argues that it should be presumed the legislature intended no such adjustment. Given this, AIC maintains that the Commission can not add terms where the legislature did not. The Commission has only the powers given to it by the Act.

AIC explains further that the intervenors' proposal asks the Commission to read the exact same statutory language defining the reconciliation balance two entirely different ways depending on the circumstances: without any adjustment when calculating the reconciliation balance to be charged or refunded, but with an adjustment for taxes when calculating the reconciliation balance for the purposes of applying interest. AIC insists that the additional math required by the intervenors' proposals contravenes the plain language of the Act and the Commission's earlier decisions on that language. AIC believes that this is exactly why the Commission rejected this proposal previously: the Commission recognized "where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically" and then concluded "it is difficult for the Commission to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express." (Docket Nos. 13-0501/13-0517 (Cons.), November 26, 2013 Interim Order at 26)

In the aforementioned Docket No. 13-0553 concerning ComEd, AIC notes that the Commission rejected a proposal to adjust (with a tax "gross-up") the rate of reconciliation interest to account for the utility's tax costs. Instead, AIC relates that the Commission found the statute set a fixed rate of interest that could not be adjusted for taxes:

> The Commission is not constructing a WACC on its own; it is applying an interest rate explicitly required by law, one that is equal to, not in excess of, ComEd's WACC. No 'gross-up' was provided for in the Act. ComEd's proposal would require the Commission to apply an interest rate greater than WACC. The fact that the legislature, in P.A. 98-0015, specified an interest rate, not a return, and set WACC as the interest rate to be applied to the reconciliation balance without any mention of a 'gross-up' for the effect of income taxes is determinative. (November 26, 2013 Order at 18)

In that same order, AIC reports that the Commission rejected the AG's proposal to reduce the reconciliation balance by the amount of taxes before calculating interest. (Id. at 43) On the same day, AIC continues, the Commission rejected a proposal to adjust AIC's reconciliation balance to account for the utility's income taxes. The Commission found that the Act "does not appear to require or even reference" such an adjustment, noting, "where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically." (Docket Nos. 13-0501/13-0517 (Cons.), Interim Order at 26) AIC argues further that the Commission can presume that the legislature, by its failure to act, has acquiesced to this understanding of the language of the Act, and specifically to the Commission's rejection of proposals to adjust the reconciliation balance for ADIT before applying interest to it.

AIC also denies the claim by the intervenors that their proposal would more accurately reflect AIC's costs. As is apparent from the EIMA, the legislature chose to adopt a prescribed interest model for calculating interest. AIC contends that the intervenors seek (in part) to reverse this legislative choice and impose a cost-based model. AIC asserts that a cost-based model attempts to capture all of the costs to the utility of not having reconciliation funds, or all the benefits to the utility of having excess reconciliation funds, including the tax consequences to the utility's business. AIC witness Warren explains that income taxes are factored into cost-based ratemaking in two ways: first, they are considered a recoverable cost that is included in the utility's cost of service; and second, they are factored into the financing costs the utility incurs when it invests in assets. Factoring income taxes into one's consideration of financing costs for the reconciliation balance thus requires both (1) consideration of tax consequences to the reconciliation balance and (2) that the utility's return requirement either has to be "grossed-up" by the inverse of the tax rate or some other provision needs to be made for the recovery of the tax that will be incurred as a result of the receipt of the equity return.

AIC asserts that this highlights the irrationality of the intervenors' proposals. According to AIC, they fail to consider all of AIC's tax costs associated with the reconciliation. They consider the impact of taxes when determining the principal (i.e., by removing ADIT from the reconciliation balance). But they ignore the impact of taxes in determining the interest rate, when they fail to gross up the WACC rate. AIC accuses the intervenors of applying prescribed-interest methods when it suits them, and cost-based principles when it does not—on a highly selective basis. Not coincidentally, AIC suggests, their selection has the effect of maximizing the rate reduction experienced by AIC—which may be a desirable result for the intervenors, but which provides no basis for Commission action.

The intervenors attempt to avoid this conclusion by saying that AIC finances its reconciliation balance solely with debt, and as the interest on such debt is deductible for income tax purposes, no gross-up for income taxes on that debt is appropriate or necessary for the utility to fully recover the cost of the debt. AIC responds that the premise that AIC finances its reconciliation balance solely with debt is false. First, AIC states that the only basis for the AG's conclusion that AIC finances its reconciliation balance with debt is the Commission's unsupported and ultimately legislatively-overruled conclusion in Docket No. 12-0001 that AIC used short-term debt to finance its reconciliation balance. AIC denies the veracity of that conclusion and avers that in any event it was preempted and superseded by the legislature. (See P.A. 98-0015, Subs. 1) Second, AIC states that it has submitted uncontroverted testimony in this case that it finances its reconciliation balance using the same mix of debt and equity that it uses to finance all its other operational expenses. Moreover, if it did finance its reconciliation balance using only debt, AIC indicates that such debt could not be used to finance any other operations. The debt would then have to be removed from AIC's overall capital structure—which means other financial needs must be satisfied with equity. (Id.) Yet none of the intervenors propose to remove from AIC's capital structure the same debt they assume AIC uses to finance its reconciliation balance.

AIC maintains that the intervenors' reliance on traditional ratemaking principles is inapplicable as well. Because the EIMA represents a radical departure from traditional ratemaking, including test-year and retroactive-ratemaking principles, AIC contends that reliance on "tradition" is misplaced. Whatever one makes of the intervenors' claims that the Commission has always considered "cost-based" factors, AIC argues that these assertions provide no basis for disregarding the legislature's directive establishing a new and different way of setting rates.

Also misplaced, in AIC's opinion, is reliance on the Fourth District Appellate Court's December 11, 2013 opinion in Ameren v. ICC. The intervenors argue that this decision empowers the Commission "to rely on its common practices [to adopt the] ADIT adjustment to the reconciliation balance to achieve a just and reasonable result." (CUB/IIEC Initial Brief at 19) AIC argues that the Fourth District Appellate Court's opinion is not controlling because it considers (1) a different subsection of the EIMA, (2) the treatment of projected plant in rate base instead of the reconciliation balance, and (3) a different type of ADIT. AIC insists that the court decision does not provide the Commission with authority to adjust the calculation of the reconciliation balance before applying interest.

Finally, AIC contends that the Commission need not reach any of these issues. The Commission resolved this issue for AIC in Docket Nos. 13-0501 and 13-0517 (Cons.), and stated that it would revisit the issue only if "further arguments by parties are presented or clarity from the legislature is provided on this topic." (Interim Order at 26) AIC relates that the conditions for revisiting this issue have not been met. AIC states further that the AG's alternative rate base proposal, although different in form, seeks the same result as the primary proposals.

B. AG Position

In support of its proposal, the AG asserts that the legislature directed that the reconciliation interest rate equal AIC's WACC approved by the Commission for the prior rate year, but did not specify how to determine the amount to which the interest should be applied. Consistent with the statute's overall purpose to match revenues with actual costs, the AG urges the Commission to only apply the interest rate to amounts that the utility will actually have to finance during the reconciliation period. Stated differently, interest should be applied to only the net cash flow that was foregone by the utility while awaiting recovery of the reconciled revenue requirement.

The AG notes that in Docket Nos. 13-0501 and 13-0517 (Cons.), the Commission declined to adjust the reconciliation balance to which interest is applied to remove the gross-up for taxes. The Commission recognized that this approach "is likely a more accurate accounting of the economic impacts" of the reconciliation recovery, and was consistent with standard ratemaking principles and with GAAP, but it stated that "it is difficult for the Commission to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express." (Interim Order at 26) The Commission concluded by stating that "[i]n the future, if further arguments by parties are presented or clarity from the legislature is provided on this topic, the Commission will revisit the issue." (Id.)

In responding to the Commission's stated interest in additional information about the AG's recommendation to apply interest to the net-of-tax reconciliation balance, AG witness Effron explains how the reconciliation balance is calculated. He points out that the actual reconciliation revenue requirement appears on Schedule FR A-1 REC. As can be seen on lines 15-19 of AIC Ex. 19.1, Schedule FR A-1 REC, there is a gross-up of the return component to provide for income taxes. (See AG Ex. 2.0 at 9) The AG also states that Schedule FR A-4 further illustrates how the gross-up for income taxes can be thought of as consisting of two components: the additional income that AIC would have earned (if the revenue requirement in effect had equaled the actual revenue requirement) and the income taxes related to that additional income. (See AG Ex. 2.0 at 10) Mr. Effron lays out the math underlying his adjustment to demonstrate the tax component of AIC's calculation of the reconciliation balance. On AG Ex. 2.2, Schedule DJE-2, Mr. Effron showed the following:

> The net income produced by the revenue requirement in effect for 2013 was $65,278,000. This is $35,298,000 less than the income requirement of $100,576,000 that is calculated by applying the weighted cost of equity (including the cost of preferred stock, which is subject to income taxes) to the reconciliation rate base. The additional revenue necessary to produce the $35,298,000 of additional income is $60,005,000, because that additional revenue will be subject to income taxes of $24,707,000. Thus, the $60,005,000 shown as the "Variance Before Collar" on Ameren Schedule FR A-4 consists of $35,298,000 of net income that is due shareholders and $24,707,000 that is due in taxes to the state and federal governments. (AG Ex. 2.0 at 10)

Mr. Effron concludes that the $35,298,000 portion of the reconciliation balance goes to AIC, but the remaining $24,707,000 represents an amount that was not paid in income taxes because AIC had not received the revenues upon which these taxes are based. When the total reconciliation balance is recovered from customers, the AG states that the $35,298,000 in income will go to AIC, but the amount representing income taxes will go to the state and federal governments. Thus, the AG continues, the foregone cash flow from the reconciliation under-collection is the $35,298,000, not the $60,005,000 total reconciliation balance.

While AIC's shareholders have a claim to the revenues representing the $35,298,000 in additional income that is due them, entitling them to interest on that amount during the reconciliation period, the AG maintains that they have no claim on the revenues recovered to pay taxes. As Mr. Effron points out:

> It would be inequitable and unreasonable to allow Ameren to recover interest costs from customers on a balance due to the government, which is what the deferred taxes on the reconciliation balance represent.
>
> To allow the Company to recover interest on a balance due a third party violates the most basic principles of utility ratemaking. Yet this is

> what happens if the reconciliation balance on which interest is accrued is not reduced for applicable income taxes. To avoid this inequitable and unreasonable result, the balance on which interest is accrued should be reduced by applicable deferred income taxes. (AG Ex. 2.0 at 11)

Significantly, the AG observes that the income tax is not paid until after the reconciliation revenue is actually received, eliminating any actual financing costs to AIC. In fact, as Mr. Effron observed, "Ameren does not owe the income taxes until the revenues are actually received, and so does not owe the government any interest on the deferred tax amounts. Allowing Ameren to recover interest on these amounts would allow the Company to recover interest that it does not actually have to pay." (Id.)

AG witness Brosch explains the issue somewhat differently, but arrives at the same conclusion as Mr. Effron. Mr. Brosch recommends that:

> The Commission offset the reconciliation balance to which the interest rate is applied to recognize the Company's actual incremental investment in such balances after the deferral of income taxes is considered. I explained that the incremental actual invested capital associated with reconciliation over- or under-recoveries is directly reduced by income tax payment deferrals, because income taxes are not paid by the utility until the accrued reconciliation revenues are actually collected by the utility or returned to ratepayers in cash and the related taxes become payable. When cash recovery of reconciliation revenues is delayed, the cash payment of related income taxes is also delayed, and the opposite is true when cash revenues are excessive and must be returned to ratepayers through the reconciliation process. (AG Ex. 1.0 at 10)

Mr. Brosch also presents an example where another state's public utilities commission, in this case Hawaii, recently found that income tax deferrals should be recognized as an offset to the balance of accrued revenues that is allowed to earn interest. The AG relates that the Hawaii Public Utilities Commission ordered that a short-term-debt cost interest rate be applied to deferred revenue balances. After obtaining Internal Revenue Service ("IRS") approval for the associated income tax deferral accounting that ComEd and AIC use, the Hawaiian Electric Companies applied interest to the net-of-income-tax deferred revenue regulatory asset balance. Relevant documents from that Hawaii proceeding were entered into evidence as AG Ex. 3.2.

According to the AG, AIC's argument that the principal to which interest is applied is specified in the Act ignores the actual language in the statute that specifies that interest be applied to the under- or over-collection indicated by such reconciliation, which is left undefined. In other words, the AG contends that the reconciliation interest calculation instructions are not as clear as AIC portrays. The AG points out that the interest models set forth by AIC witness Warren were developed specifically for this litigation and the contemporaneous 2014 ComEd formula rate case, Docket No. 14-0312. The AG asserts that Mr. Warren developed his models specifically to justify charging customers more than AIC's actual costs associated with financing the cash flows related to the reconciliation balance and under-collection.

EIMA is intended to provide the utility with the recovery of its actual costs. The AG maintains that it would be unreasonable and inconsistent with AIC's actual tax liability to compensate it with interest as if it paid taxes before the reconciliation revenues are received. According to the AG, however, that is the effect of AIC's application of interest to the reconciliation under-collection, increased for taxes. The AG requests that the Commission adjust the reconciliation balance to reflect the net-of-tax under-collection, and restate the interest applicable to the reconciliation under-collection to remove any interest expense related to the portion of the reconciliation balance as calculated by AIC.

C. CUB/IIEC Position

CUB and IIEC argue that AIC's failure to reflect offsetting tax effects overstates the interest on the reconciliation balance by over 40%. In the current case, AIC seeks to recover a total reconciliation balance of $70,457,000 (Schedule FR A-1, Line 28) that includes over $10,000,000 of interest (Schedule FR A-4, Line 33 minus Line 3). The calculation of interest on only the net carrying value of the reconciliation balance reduces the amount of interest by over 40%, reducing AIC's revenue requirement by approximately $4,000,000.

AIC calculates the interest by multiplying the entire reconciliation balance by its WACC. CUB and IIEC argue that instead interest should be calculated only after the under- or over-collection amount is first adjusted for income tax benefits. That is, AIC should calculate interest on only the net carrying value of the reconciliation balance, less ADIT, to reflect AIC's net cash investment in the reconciliation balance.

In its current filing, AIC has a positive reconciliation balance, which means it incurred costs that were not recovered in the rates in place during 2013. This also means the additional costs incurred in 2013 were deductible for income taxes. As a result, AIC experienced a temporary income tax savings and cash benefit associated with the tax deductibility of these costs. The essence of the ADIT adjustment recommended by witnesses Gorman and Effron is that the reconciliation balance must be reduced by the temporary income tax savings AIC enjoyed in 2013 in order to determine its actual net cash investment in the reconciliation balance. CUB and IIEC aver that is the only balance on which interest can properly be calculated because AIC received additional cash in the form of lower income tax expense due to higher income tax deductions. Those tax savings mean that AIC's out-of-pocket cash position is not the total reconciliation balance, but rather the net-of-tax reconciliation balance. CUB and IIEC maintain that AIC should not receive interest on any more than its actual net cash investment, which is the reconciliation balance net of the income tax benefits.

To illustrate the effect of the tax benefits on AIC's reconciliation balance, Mr. Gorman posits that if AIC incurs $400,000 more in payroll expense during 2013 than was reflected in the revenue requirements determined for 2013, AIC will have a $400,000 higher reconciliation balance. AIC, however, will deduct the higher payroll expense for the calculation of its 2013 income taxes. As a result, assuming a 40% tax rate, Mr. Gorman points out that AIC will realize $160,000 of reduced income taxes associated with the higher payroll expense ($400,000 x 40%). Therefore, AIC will only have carried a cash reconciliation balance amount of $240,000 for the additional payroll expense ($400,000 - $160,000). Mr. Gorman states that AIC's cost of carrying the unrecovered payroll is based on its out-of-pocket net cash investment (cash expenditures less income tax savings/benefits) of $240,000 through the period the full accounting balance ($400,000) is recovered. As such, he argues that AIC should only be allowed to recover carrying costs on its out-of-pocket net cash investment of $240,000. AIC is therefore made whole for the delayed recovery of the reconciliation balance by fully recovering the $400,000, and the carrying charges on the associated out-of-pocket net cash investment in the reconciliation balance ($240,000) during the recovery period.

Because utilities are capital-intensive businesses that invest large amounts of capital continuously in newly constructed or acquired assets, CUB and IIEC assert that they generate large income tax deductions for bonus/accelerated depreciation and other tax deductions and credits that must be recognized by recording ADIT under GAAP rules. Rates include income taxes without regard to these deductions because the requirement for normalization accounting denies ratepayers the immediate income tax deferral benefits resulting from such tax deductions. As a result, CUB and IIEC state that ratepayers typically provide the utility with more tax related revenue than the utility pays out, and the utility retains this revenue as ADIT. From a ratemaking perspective, a utility's persistently large credit ADIT balance caused by its deferred payment of recorded tax expenses included in the revenue requirement represents a significant source of capital to the utility, which is zero cost. This source of zero-cost capital to the utility created by the income tax savings permitted under tax laws and regulations are not immediately "flowed through" to ratepayers. CUB and IIEC explain that regulators typically reduce rate base by the ADIT balances, so as to properly quantify the net amount of investor-supplied capital to support rate base assets. As an example, CUB and IIEC point out that the Commission routinely recognizes ADIT balances as rate base reductions in electric delivery service and other rate proceedings.

The revenue requirement set for 2015 will include both the reconciliation balance, interest on that balance, actual 2013 costs, and projected plant additions for 2014. CUB and IIEC state that these components are not recovered separately, but rather are lumped together in one revenue requirement to be recovered in 2015. They assert that the recovery lag associated with the reconciliation balance about which AIC complains is no different than the recovery lag associated with the rate base items for which ADIT is taken into account. Thus, they contend that there is no discernible difference between the ADIT routinely recognized in consideration of rate base additions, and the ADIT attributable to the reconciliation balance.

CUB and IIEC recognize that the AG offers an alternative proposal which reduces the rate base by the reconciliation related ADIT balance, treating it as 100% distribution jurisdictional. They understand that this is intended to at least acknowledge the existence of these ADIT balances, which would not exist if not for the Illinois distribution formula ratemaking process. Mr. Brosch reasons that AIC delivery service customers are responsible for paying interest at a WACC rate on such balances until they are recovered, which is comparable to rate base inclusion of the balances. CUB and IIEC state that the AG's alternative should only be considered, however, if the Commission rejects the ADIT adjustment to the reconciliation balance proposed by Mr. Gorman and Mr. Effron. In short, CUB and IIEC maintain that the ADIT balances must be taken into account in one fashion or another to ensure ratepayers pay only just and reasonable rates.

In an attempt to justify the inflated reconciliation balance AIC's approach produces, AIC witness Warren attempts to show how Mr. Gorman's ADIT adjustment is out of line with two models he created for calculating interest on the reconciliation balance. He has labeled his two methods as the "prescribed interest" model and the "cost-based" model and his testimony describes the parameters according to how each model calculates the interest for the reconciliation balance. Mr. Warren compares the prescribed interest model as similar to the process of a bank charging interest on a loan balance. He calculates interest according to this model by multiplying a rate by the reconciliation balance. Second, Mr. Warren compares the cost-based model to a conventional regulatory calculation. According to the cost-based model, the reconciliation balance is reduced by accumulated tax benefits before being multiplied by a carrying charge rate that includes a gross-up for income taxes.

CUB and IIEC argue that Mr. Warren's "models" are not an appropriate basis for the Commission to evaluate the ADIT issue for three reasons. First, the models are a product of Mr. Warren's own invention and are not prescribed in the EIMA or anywhere else in the Act. Second, Mr. Warren's cost-based model inappropriately assumes the carrying charge rate is based on 100% common equity capital and he has proposed to gross-up the common equity carrying charge rate for income taxes. The interest rate provided for in the EIMA, however, is not a rate of return, but rather an interest rate based on the utility's WACC. The WACC applied to the reconciliation balance is simply the interest received in recognition of AIC incurring a carrying cost for the reconciliation balance. Interest is tax deductible and should not be grossed-up for taxes as suggested by Mr. Warren's second model, the cost based model. Third, the Commission previously found merit in the adjustment proposed by Mr. Gorman and the AG in Docket Nos. 13-0501 and 13-0517 (Cons.), and found it to be in line with GAAP accounting. Thus, while it did not ultimately adopt the adjustment based on statutory concerns, CUB and IIEC state that the Commission has already accepted as reasonable the factual and regulatory justifications for making the ADIT adjustment to the reconciliation balance.

CUB and IIEC observe further that the Commission examined the definition of "formula rate structure," as that term is used in the EIMA, and also determined which ratemaking adjustments were appropriately considered in a formula rate proceeding and which required a separate proceeding under Section 9-201 of the Act to effectuate. The Commission concluded in Docket Nos. 13-0501 and 13-0517 (Cons.) that only changes to Schedules FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing. The Commission reasoned that these were the only schedules adopted as the "formula rate structure," and were the only schedules explicitly approved as such. With regard to supporting schedules and workpapers, the Commission noted:

> However to be clear on the Commission's point of view concerning the specific schedules, appendices, and workpapers that are the subject of this issue, the Commission views those supporting documents to provide guidance in the development of the inputs for Schedules FR A-1 and FR A-1 REC. The Commission does not consider it necessary for the Commission to approve changes to formula rate schedules (other than FR A-1 and FR A-1 REC), appendices, or workpapers pursuant to a Section 9-201 filing. (August 19, 2014 Order at 26)

The Commission is currently examining this same issue as it relates to ComEd in Docket No. 14-0316. As this issue pertains to AIC, however, the Commission has spoken. CUB and IIEC assert that the Commission's conclusion controls on this issue, which directly contradicts AIC witness Stafford's suggestion that changes to formula rate schedules and appendices can only be made in a separate Section 9-201 proceeding before the Commission.

CUB and IIEC assert that Mr. Gorman's ADIT adjustment in this proceeding is unlike the adjustments proposed in the previous formula rate dockets, as it does not disturb either Schedule FR A-1 or Schedule FR A-1 REC, and therefore can – and should – be made in this proceeding. Mr. Gorman showed that currently AIC calculates reconciliation interest on the amount of $60,005,000 shown in Schedule FR A-4, Line 3, entitled "Variance With Collar." The $60,005,000 is the difference between the actual 2013 revenue requirement and the revenue requirement determined for 2013. It reflects the costs that were incurred in 2013 and will be collected from customers in 2015. Mr. Gorman explains the amount of interest currently calculated on this schedule must be reduced to reflect the tax savings/benefits associated with the reconciliation balance at the tax rate of 41.175%. Therefore, Mr. Gorman creates an additional workpaper, WP 23, to calculate the necessary reduction in the interest on the reconciliation balance and show the adjustment. The amount of the adjustment on WP 23 was then transferred to Schedule FR A-4. As shown on CUB/IIEC Ex. 1.02, Mr. Gorman inserts line 30a to accept this adjustment to reduce the level of interest calculated on the reconciliation balance.

CUB and IIEC report that this issue has been raised in each of AIC's formula rate proceedings to date. Mr. Brosch raised the issue in Docket Nos. 12-0001 and 12-0293, but the net-of-tax concern was not addressed in the Commission's analysis and conclusions in those orders. In ComEd's initial formula rate proceeding, Docket No. 11-0721, Mr. Brosch raised concerns about the issue of the reconciliation balance that is allowed to earn interest. At that time, the Commission did not make a definitive ruling, citing concerns about the completeness of the record. The issue was also raised in each of ComEd's and AIC's last formula rate proceedings, Docket No. 13-0318 and Docket No. 13-0301, respectively. As noted earlier, when raised in Docket Nos. 13-0501 and 13-0517 (Cons.), the Commission concluded in its Interim Order that the position advanced by the AG and CUB was the one with "merit." (Interim Order at 26) As the Commission explained in Docket No. 13-0553, the AG and CUB proposed that ADIT "should be netted against the reconciliation balance before calculating the interest amount." (Order at 43) "This concept," according to the Commission, "[1] is consistent with Generally Accepted Accounting Principles, [2] is consistent with standard regulatory practice that matches ADIT elements to the associated assets included in rate base and . . . [3] properly recognizes the cash benefit to the utility that would otherwise have been paid out for income taxes on the amount." (Id.) Nevertheless, the Commission concluded that it did not have the latitude to interpret Section 16-108.5(d)(1) — the interest provision — in such a way as to incorporate the revision offered by the AG and CUB. The Commission was "troubled by the fact that although Section 16-108.5(d)(1) fails to prohibit such accounting treatment, the converse is also true — it does not appear to require or even reference it." (Id.) The Commission was also given pause by its perception that, when the Act "does intend that adjustments be made to an amount of a balance, it has done so specifically." (Id.) The Commission therefore found it "difficult . . . to support an interpretation of the Act which reads into it exceptions, limitations, or conditions the legislature did not express . . . ." (Id.)

CUB and IIEC assert that the Commission's sole reason for not adopting the proposal advanced by the AG and CUB — that is, that the EIMA fails to expressly mention an adjustment for ADIT — has recently been rejected by the Appellate Court. In the aforementioned Ameren v. ICC, the Court was asked to review AIC's proposed rate template pursuant to section 16-108.5(c) of the EIMA. (2013 IL App (4th) 121008, ¶¶ 10, 33-34) There, AIC complained that the Commission acted improperly by reducing its "rate base by ADIT for projected plant additions." (Id. at ¶ 33-34) AIC argued, among other things, that "the [EIMA] did not provide the Commission with the authority to deduct ADIT because, while the statute provides guidance for other adjustments, the statute fails to mention an adjustment for ADIT." (Id. at ¶ 37) CUB and IIEC report that the court disagreed.

In Ameren v. ICC, the Commission pointed to Section 16-108.5(c) — the EIMA subsection that provides guidance for the establishment and amendment of template formula rate tariffs — as the source of its authority "to rely on its common practices in determining a just and reasonable rate." (Id. at ¶ 38) That section expressly empowers the Commission to approve a utility's rate template only if it is "just and reasonable." (220 ILCS 5/16-108.5(c)) The court noted that, "[w]hile the Commission agrees the statute does not expressly allow an adjustment for ADIT, the Commission explains the statute does not expressly disallow the adjustment, but authorizes the Commission to exercise its discretion in determining just and reasonable rates." (Ameren v. ICC, 2013 IL App (4th) 121008, ¶ 38) The court agreed and held that the Commission, when reviewing an electric utility's template formula rate filing, and even absent an express statutory reference to ADIT, had authority to prevent "a result which is neither just nor reasonable for ratepayers." (Id. at ¶ 39)

CUB and IIEC contend that Ameren v. ICC has direct application in the present case. Here, they observe, the Commission has already found that the proposal to net ADIT "is consistent with standard regulatory practice." Having made that determination, the Commission is empowered — as it was in Ameren v. ICC — "to rely on its common practices" by adopting Mr. Gorman's ADIT adjustment to the reconciliation balance to achieve a just and reasonable result. Furthermore, even in the absence of an express reference to ADIT in the EIMA, CUB and IIEC argue that it is "well-settled . . . that administrative agencies have both express and implied powers to do all that is reasonably necessary to accomplish statutory objectives, and not every agency power must be explicitly articulated in the governing statute." (Ikpoh v. Dep't of Prof. Reg., 338 Ill. App. 3d 918, 927 (1st Dist. 2003) (agency authority "can arise 'by fair implication and intendment from express statutory provisions, as an incident to achieving the objectives for which the agency was created'" (citations and punctuation omitted))) They also point out that the Illinois Supreme Court has held that the Commission is responsible for "determining that a utility's rates are just and reasonable and that its services are adequate." (Sheffler v. Commonwealth Edison Co., 2011 IL 110166, ¶40) CUB and IIEC contend that that obligation, by fair implication and intendment, creates authority in the Commission to adopt a method for calculating interest which the Commission has already found to be "consistent with Generally Accepted Accounting Principles [and] . . . standard regulatory practice," and which "properly recognizes the cash benefit to the utility."

In fact, CUB and IIEC continue, the recognition of deferred income taxes only appears once in Section 16-108.5, yet the Commission routinely nets out ADIT in other contexts without an explicit mention in the EIMA. In Section 16-108.5(c)(4)(D) a carrying cost equal to the weighted cost of long-term debt is applied to the pension asset, net of "deferred tax benefits." They state, however, that all other recognition of ADIT in formula ratemaking was not the result of reliance on specific wording in the Act. As an example, they note that the offset for ADIT is a significant component of the rate base used to determine the revenue requirement for formula rates but does not appear to be based on any specific reference to ADIT in Section 16-108.5.

Furthermore, CUB and IIEC relate that AIC itself included an adjustment to the amount of injuries and damages expense recorded in the FERC Form 1 for 2013, to recognize cash payments for injuries and damages. Although this adjustment was not opposed by other parties to this proceeding, CUB and IIEC observe that this type of ratemaking adjustment is not specifically contemplated by the EIMA. Recognizing cash payments for injuries and damages increases AIC's expenses and its formula rate revenue requirement. If the Commission can make interpretations that increase revenue requirement, CUB and IIEC state that it would be balanced to also allow it to make reasonable and accurate interpretations of cost of service that decrease revenue requirements.

In conclusion, CUB and IIEC insist that the Commission should not allow AIC to recover interest on an amount that exceeds its own actual cash investment. If interest is calculated on any more than AIC's net cash investment, they point out that the result will be an inflated reconciliation amount. In order to avoid allowing AIC to recover interest on a balance 40% higher than its actual net investment, they believe that the Commission should adopt Mr. Gorman's and Mr. Effron's adjustments to allow AIC to only recover interest on its net cash investment in the reconciliation balance.

D. Commission Conclusion

The Commission recognizes that there is still a difference of opinion between the parties in determining how to properly calculate the interest to be paid or refunded as part of the reconciliation process under the EIMA. The AG, CUB, and IIEC all favor the calculation of interest on the reconciliation balance only after that portion of the balance to be collected for taxes has been deducted. In other words, consistent with the EIMA's overall purpose to match revenues with actual costs, they urge the Commission to only apply the interest rate to amounts that AIC will actually have to finance during the reconciliation period. AIC, on the other hand, argues that the EIMA's detailed provisions do not provide for such an adjustment to the reconciliation amounts when calculating interest. AIC is equally adamant that the holdings in Ameren v. ICC are inapplicable to the circumstances at hand.

As stated in Docket Nos. 13-0501 and 13-0517 (Cons.), the Commission disagrees with AIC that the EIMA is as clear as AIC contends and continues to find merit in the intervenors' position. The intervenors' approach conforms to GAAP, would capture deferred tax benefits, and is likely a more accurate accounting for all of the economic impacts caused by the revenue requirement reconciliation. Nevertheless, the Commission continues to be troubled by the fact that although Section 16-108.5(d)(1) fails to prohibit such accounting treatment, the converse is also true—it does not appear to require or even reference it. Further, where the Act does intend that adjustments be made to an amount of a balance, it has done so specifically, as noted in the Interim Order in Docket Nos. 13-0501 and 13-0517 (Cons.). The Commission also observes that this is not the first time the clarity of this subsection concerning the reconciliation balance has been called into question and that the legislature has already once amended it. Thus, it is difficult for the Commission to support an interpretation of the EIMA which reads into it exceptions, limitations, or conditions the legislature did not express. (Davis v. Toshiba Machine Co., 186 Ill.2d 181, 184-185 (1999))

Considering all of the arguments presented regarding the meaning of Section 16-108.5(d)(1), the Commission can not at this time adopt the intervenors' adjustment. While the ADIT rate base issue in Ameren v. ICC bears some similarity to the reconciliation interest issue at hand, the Commission is reluctant to rely upon the holdings therein in light of the arguments concerning its applicability. The Commission notes that this issue is under judicial review in the appeal of Docket No. 13-0553 relating to ComEd. The Commission anticipates that the outcome of that appeal will provide needed clarity on this issue. Therefore, despite its misgivings about the appropriateness of AIC's position, for purposes of this proceeding, AIC is entitled to the full reconciliation balance without any deduction for ADIT.

IX. COST OF SERVICE, REVENUE ALLOCATION, AND RATE DESIGN

Section 16-108.5(c)(6) of the Act states that “[u]ntil such time as the Commission approves a different rate design and cost allocation pursuant to subsection (e) of this Section, rate design and cost allocation across customer classes shall be consistent with the Commission's most recent order regarding the participating utility's request for a general increase in its delivery services rates.” AIC’s proposed rate design follows the revenue allocation and rate design methodology approved by the Commission in Docket No. 13-0476.[3] In formulating this rate design, AIC first developed an embedded cost of service study ("ECOSS") that incorporated the reconciliation amount for each Rate Zone. Second, the revenue allocation process determined the revenue responsibility for each rate class in each Rate Zone. Third, AIC adjusted individual charge components for each delivery service rate class. AIC’s proposed revenue requirement in this case is greater than in the prior case, which will result in higher delivery service charges for most customers. The magnitude of the changes varies by rate class and Rate Zone. No party opposes AIC’s rate design methodology or results. The Commission finds that this proposed adjustment is uncontested, is appropriate, and it will be adopted for the purposes of this proceeding.

X. OTHER ISSUES

A. Uncontested Issues

1. Incremental EIMA Plant Additions

Staff witness Everson recommends that the Commission include within its order a table describing the incremental plant additions AIC is making as a result of its participation in the EIMA scheme by year and by dollar amount. AIC agreed with this proposal. The Commission finds the proposal to be appropriate and is adopting it.

The Commission is setting a revenue requirement in this proceeding for the recovery of $13.6 million in actual 2013 plant additions and $100.3 million of projected 2014 plant additions in compliance with Section 16-108.5. The detail of these actual and projected plant additions by categories as required by Section 108.5(b)(2) are as follows:

[3] The Order on Rehearing in Docket 13-0476 directed that residential rate design be further modified to reduce the level of fixed charges to recover 36.4% of the class revenue requirement and increase variable Distribution Delivery Charges to compensate. (Docket No. 13-0476, September 30, 2014 Order on Rehearing at 42) Prices submitted in compliance with the Order in this proceeding will reflect the residential rate design directive adopted in Docket No. 13-0476 on rehearing.

	CATEGORY	ACTUAL 2012 (In Millions)	ACTUAL 2013 (In Millions)	PROJECTED 2014 (In Millions)	CUMULATIVE (In Millions)
(A) (i)	Distribution Infrastructure Improvements	$7.3	$3.5	$27.3	$38.1
(A) (ii)	Training Facility Construction or Upgrade Projects	$5.8	$1.6	$0.0	$7.4
(A) (iii)	Wood Pole Inspection, Treatment, and Replacement	$0.0	$0.0	$0.0	$0.0
	Total Electric System Upgrades, Modernization Projects, and Training Facilities	$13.1	$5.1	$27.3	$45.5
(B) (i)	Additional Smart Meters	$0.0	$0.4	$50.0	$50.4
(B) (ii)	Distribution Automation	$6.5	$5.6	$18.3	$30.4
(B) (iii)	Associated Cyber Secure Data Communications Network	$0.0	$2.5	2.0	$4.5
(B) (iv)	Substation Micro-processor Relay Upgrades	$0.3	$0.0	$2.7	$3.0
	Total Upgrade and Modernization of Transmission and Distribution Infrastructure and Smart Grid Electric System Upgrades	$6.8	$8.5	$73.0	$88.3
	Total Plant Additions in Compliance with Section 16-108.5(b)(2) of the Act	$19.9	$13.6	$100.3	$133.8

2. Modifications to Formula Rate Filing Schedules

a. Appendix 7 – Storm Costs greater than $3.7 Million

Staff proposed that in future formula rate filings, the Company should separately identify those unusual operating expense amounts greater than $3.7M on its Appendix 7 schedule. AIC accepted this recommendation. The Commission finds that this proposed adjustment is uncontested, is appropriate, and it will be adopted for the purposes of this proceeding.

b. Appendix 3 and Part 285 Schedules – Current State and Federal Income Tax Expense

To better implement the CWC calculation in future cases and to increase transparency, Staff witness Everson recommends that AIC separately identify current and deferred federal and state income taxes in its CWC calculations, rather than presenting a combined total. AIC accepted this recommendation. The Commission finds that this proposed adjustment is uncontested, is appropriate, and it will be adopted for the purposes of this proceeding

B. Safety Awareness and Recognition Guidelines

1. Staff Position

Staff concurs with AIC's removal of safety awards expenses. Staff notes that the Commission, in Docket No. 13-0301, expressed concerns regarding safety awards for which AIC was seeking recovery in that case. It notes the Commission's statement that "[s]uch incentives and rewards . . . serve the same purpose as safety related incentive compensation programs." (Docket No. 13-0301 Order at 59-60) Staff notes the concern expressed by the Commission regarding the apparent lack of company-wide spending guidelines for safety recognition awards as well as for other credit card purchases. It points to the Commission's statement that, "there do not appear to be any definitive company standards for reviewing and evaluating employee credit card purchases." (Id. at 69)

Staff notes AIC’s establishment of the Safety Awareness and Recognition Spending Guidelines ("Guidelines") to address the lack of a centralized policy regarding safety recognition awards. Initially, it criticized the Guidelines as incomplete due to the lack of criteria for “Departmental Recognition for Long Term Accomplishments for No Recordable Accidents,” and because the Guidelines had not been finalized.

Staff states that AIC’s rebuttal version of the Guidelines contained the complete policy that is to be implemented by October 30, 2014. Staff opines that the updated Guidelines represent a complete set of safety requirements necessary for individuals or departments to achieve to receive an award or recognition which is administered by a centralized department.

Staff’s position, however, remains that, with or without the Guidelines, AIC has not remedied the Commission’s concern regarding the duplicative nature of the safety awards and recognition under AIC’s incentive compensation plans. It states that the Commission’s language was very specific regarding its conclusion that safety awards serve the same purpose as safety related incentive compensation that are recoverable under Section 16-108.5(c)(4)(A) of the Act. Staff affirms its position that the awards and recognition provided for in the Guidelines still represent a duplicate layer of compensation beyond base pay and safety-related incentive compensation.

Staff observes that AIC is not requesting approval for the Guidelines and notes that the Company did not explain why the Guidelines were included in this case if Commission approval is unnecessary. Staff has found no reason why the Guidelines should not be approved. However, it observes that the recoverability of expenses incurred under the Guidelines case would likely be subject to scrutiny in future rate cases. Staff cautions that if the Commission should choose to approve the Guidelines, it should be made clear that the approval of the Guidelines should not be construed to mean that future safety awards given pursuant to the Guidelines are recoverable from ratepayers.

2. AIC Position

AIC states that in response to the Commission's concerns regarding similar spending in Docket No. 13-0301, it disallowed on its own 2013 safety recognition spending in this case. AIC explains that it has established the formal, written Guidelines effective January 1, 2014 and submitted those Guidelines as evidence in this case. It says the Guidelines were presented, not to solicit Commission approval of the Guidelines, but to demonstrate to the Commission that it has addressed the Commission's concern that AIC lacked definitive standards for reviewing and evaluating safety spending. AIC asserts that Staff and it agree that these measures satisfy the Commission's Docket No. 13-0301 concerns regarding safety recognition spending for the most part.

AIC states that Staff and AIC have agreed to disagree on the single remaining point of dispute between them—whether safety recognition spending duplicates safety-related incentive compensation. It says that no safety recognition spending is at issue in this case due to AIC's self-disallowance. AIC explains that although the parties have identified this issue as contested, there is nothing for the Commission to resolve in this proceeding. It states the Commission may have to address the recoverability of safety recognition spending in future rate cases if AIC seeks recovery of such expenses there. For now, AIC concludes, Staff and AIC will agree to disagree.

AIC explains that in Docket No. 13-0301, the Commission disallowed AIC's 2012 safety recognition spending, citing two concerns: (1) it perceived a lack of definitive Company standards for reviewing and evaluating employee credit card purchases, including purchases made to promote safety awareness and recognize employee safety achievements; and (2) it found that safety recognition awards serve the same purpose as the safety-related incentive compensation that AIC recovers under EIMA. AIC states it has taken several measures to address the Commission's concerns. AIC explains that, in this case, it self-disallowed 2013 safety recognition spending akin to the 2012 disallowed amounts. Thus, AIC believes the level of safety recognition spending is not an issue in this case.

In addition, AIC states that it instituted the Guidelines to address the Commission's concern that AIC lacked company-wide controls over safety recognition spending. AIC explains that the Guidelines formalize AIC's policy on safety recognition spending, and establish criteria for safety recognition awards, which are token, tangible recognition of individual departmental safety achievements. AIC maintains that the Guidelines also strengthen oversight and control of safety recognition spending by centralizing administration within a Safety Department, requiring approval of quarterly spending reports by senior personnel, and defining the accounting to be used for safety recognition spending. In these ways, AIC concludes, the Guidelines limit safety recognition spending and ensure that spending is prudent and reasonable in amount.

AIC states that it completed the Guidelines August 1, 2014. It notes that Staff agrees that the completed Guidelines represent a company-wide policy regarding safety recognition spending. Thus, AIC concludes, the Guidelines address the Commission's Docket No. 13-0301 concern that AIC lacked formal controls over safety recognition spending. AIC indicates that although it has self-disallowed its 2013 safety recognition spending, it expects that the Guidelines will eliminate the need for a self-disallowance in subsequent rate cases.

AIC states that to address the Commission's concern that safety recognition spending serves the same purpose as safety-related incentive compensation, it extensively explained in testimony in this case how the expenses differ and why it is prudent and reasonable for AIC to encourage and ensure safety with safety recognition awards in addition to, and separate and apart from, safety-related incentive compensation. It asserts that safety is key to AIC's success and reduces the cost of utility service to ratepayers. Thus, AIC continues, it uses every opportunity to promote a safe workplace and workforce. AIC explains that this includes using safety skills training, compliance training, safety rules, safety policies and procedures, tools and equipment that support safe work and minimal strain, safety involvement, such as participating on a safety committee, safety support, SafeStart, New Employee Safety Training, and annual apprentice safety focus. AIC explains that it also rewards employees for Company-wide safety achievements on an annual basis with safety-related incentive based compensation. It states that recognizing individual employees or departments on a continuous basis with safety recognition awards is another method of promoting safety.

AIC maintains that none of its safety measures are duplicative or superfluous. It asserts that safety-related incentive compensation and safety recognition spending differ in myriad ways, and explains that three key differences are their "who, when, and what."

"Who," AIC explains, recognizes that while the payment of incentive compensation depends on the safety achievements of a large group, such as a division or even the entire Company, safety recognition awards are rewarded based on individual performance or that of a small work group, such as an operating center gas department. AIC states that a high-performing employee can receive a safety recognition award, even if he or she is not entitled to receive safety-related incentive compensation.

AIC explains that "when" refers to the distinction that safety recognition awards are based on shorter timeframes and are provided in real time, while safety-related incentive compensation, in contrast, is based on annual performance. Thus, AIC states, safety recognition awards provide a more immediate way of rewarding, and consequently reinforcing, safety achievements. The Company asserts that combined, safety-related incentive compensation and safety recognition awards effectively incentivize employees for the entire year.

"What," AIC explains, recognizes that safety recognition awards, unlike safety-related incentive compensation, are not entirely monetary. AIC states that they are meals, safety-related items, the cost of a presenter at a safety meeting, and the like, periodic acknowledgements of a job safely done. Because of this, AIC maintains, safety recognition awards also provide a venue for employees to talk about safety, at a short-term award luncheon for instance, or a way for employees to display and promote safety achievements, such as a weather radio or carbon monoxide detector. AIC explains that safety-related incentive compensation does not do this.

AIC concludes that if it did away with safety recognition awards, it would have no means to award individual or small group safety accomplishments on an immediate, rolling basis with discrete, tangible tokens of recognition. AIC believes that considering safety recognition awards this way highlights that they are not the same as safety-related incentive compensation.

AIC states it is true that both safety recognition awards and safety-related incentive compensation incentivize safety. But, AIC points out, there is no evidence in this case that promoting safety more than one way is unreasonable or imprudent. AIC emphasizes, that because safety is vital to its customers and its success, it should and does encourage and ensure workplace and workforce safety through every avenue.

AIC also asserts that EIMA does not support a conclusion that safety recognition awards are duplicative of safety-related incentive compensation or superfluous. AIC explains that Section 16-108.5(c)(4)(A) of the Act expressly provides for recovery of: “incentive compensation expense that is based on the achievement of operational metrics related to . . . safety . . . .” AIC says the Act does not delineate the form of safety incentives that are recoverable. AIC believes that if safety recognition awards are to be considered incentive compensation tied to safety, then EIMA expressly provides for their recovery.

Regardless, AIC reiterates that there is no 2013 safety recognition spending under review in this case. It agrees with Staff that this issue is one that must be resolved in a future case, should AIC request recovery of safety recognition expenses there.

3. Commission Conclusion

AIC has self-disallowed 2013 safety recognition spending to address the Commission's concerns regarding similar spending in Docket No. 13-0301. The Commission finds that AIC's self-disallowance satisfactorily addresses its Docket 13-0301 concerns related to safety recognition spending for the purposes of this case.

The Commission notes that effective January 1, 2014, AIC established formal, written company-wide Guidelines to govern safety recognition spending, and that it submitted the Guidelines in this case as evidence of its efforts to address the Commission's Docket No. 13-0301 concern in this regard. The Commission notes that AIC and Staff disagree about whether safety recognition spending should be recovered in light of AIC's recovery of safety-related incentive compensation under EIMA. They agree that there is nothing before the Commission for resolution in this proceeding, but that the issue may arise in AIC's next rate case, if AIC requests recovery of safety recognition spending.

XI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) AIC is an Illinois corporation engaged in the distribution and sale of electricity and natural gas to the public in Illinois, and is a public utility as defined in Section 3-105 of the Act;

(2) the Commission has jurisdiction over the parties hereto and the subject matter herein;

(3) the recitals of fact and legal argument identified as the parties' respective positions are supported by the record;

(4) the recitals of fact and conclusions of law reached in the Commission conclusions of this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law; the Appendices attached hereto provide supporting calculations for the approved rates;

(5) AIC's proposed update to its Rate MAP-P should be approved, subject to the conclusions contained herein;

(6) the rates herein found to be consistent with Public Acts 97-0616, 97-0646, and 98-0015 are based on AIC's FERC Form 1 for 2013;

(7) for purposes of this proceeding, the net original cost rate base for AIC's electric delivery service operations is $2,090,829 for the 2013 reconciliation year and $2,260,709 for the 2014 filing year;

(8) the rate of return which AIC should be allowed to earn on its net original cost rate base is 8.075% for the 2013 reconciliation year; this rate of return incorporates a return on common equity of 9.25%;

(9) rate of return which AIC should be allowed to earn on its net original cost rate base is 8.075% for the 2014 filing year; this rate of return incorporates a return on common equity of 9.25%;

(10) the rates of return set forth in Findings (8) and (9) result in base rate electric delivery service operating revenues of $924,493,000 and net annual operating income of $182,543,000, as shown in Appendix A;

(11) AIC's electric delivery service rates which are presently in effect are inappropriate and generate operating income in excess of the amount necessary to permit the company the opportunity to earn a fair and reasonable return on net original cost rate base consistent with Public Acts 97-0616, 97-0646, and 98-0015; these rates should be permanently canceled and annulled;

(12) the specific rates proposed by AIC in its initial filing do not reflect various determinations made in this Order regarding revenue requirement;

(13) AIC should be authorized to place into effect amended Rate MAP-P, consistent with the findings of this Order;

(14) AIC should be authorized to place into effect the Rate MAP-P tariff informational sheets designed to produce annual base rate electric delivery service revenues of $924,493,000, which represents an increase of $100,098,000 or 12.1%; such revenues, in addition to other tariffed revenues, will provide AIC with an opportunity to earn the rates of return set forth in Findings (8) and (9) above; based on the record in this proceeding, this return is consistent with Public Acts 97-0616, 97-0646, and 98-0015;

(15) determinations regarding cost of service, rate design, and tariff terms and conditions, as are contained in the prefatory portion of this Order, are reasonable for purposes of this proceeding and consistent with Public Acts 97-0616, 97-0646, and 98-0015; the tariffs filed by AIC should incorporate the rates and terms set forth and referred to herein;

(16) the new charges authorized by this Order shall take effect beginning on the first billing day of the January billing period following the date of the final order in this proceeding; the tariff sheets with the new charges, however, shall be filed no later than December 17, 2014, with the tariff sheets to be corrected thereafter if necessary;

(17) the Commission, based on AIC's proposed original cost of plant in service as of December 31, 2013, before adjustments, of $5,481,627,000 and reflecting the Commission's determination adjusting that figure, unconditionally approves $5,481,627,000 as the composite original jurisdictional distribution services plant in service as of December 31, 2013; and

(18) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets at issue and presently in effect for electric delivery service rendered by Ameren Illinois Company d/b/a Ameren Illinois are hereby permanently canceled and annulled effective at such time as the new electric delivery service tariff sheets approved herein become effective by virtue of this Order.

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a Ameren Illinois is authorized to file new tariff sheets with supporting workpapers in accordance with Findings (12) and (13) of this Order, applicable to electric delivery service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that Ameren Illinois Company shall update its formula rate in accordance with this Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: October 31, 2014

Briefs on Exceptions must be received by November 14, 2014.

John D. Albers
Jan Von Qualen
Administrative Law Judges